104TH CONGRESS
1st Session

SENATE

REPORT
104–176

INTERSTATE COMMERCE COMMISSION SUNSET ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

together with

ADDITIONAL VIEWS

on

S. 1396

NOVEMBER 21, 1995.—Ordered to be printed
Filed, under authority of the order of the Senate of November 20, 1995

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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Calendar No. 247

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INTERSTATE COMMERCE COMMISSION SUNSET ACT OF 1995

NOVEMBER 21, 1995.—Ordered to be printed

Filed, under authority of the order of the Senate of November 20, 1995

Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1396]

The Committee on Commerce, Science, and Transportation to which was referred the bill (S. 1396) to amend title 49, United States Code, to provide for the regulation of surface transportation, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

This legislation is in response to the Fiscal Year (FY) 1996 Budget Resolution which assumes the elimination of the Interstate Commerce Commission (ICC) and the FY 1996 DOT Appropriations bill, H.R. 2002, which provides no funding for the ICC effective December 31, 1995. Prior to the Committee's approval of S. 1396 on November 9, 1995, H.R. 2002 had not been signed into law. H.R. 2002 has since been signed by the President (P.L. 104–50).

S. 1396, as reported, would sunset two federal agencies, the ICC and the Federal Maritime Commission (FMC). The ICC would terminate effective January 1, 1996, and the FMC would terminate one year later, January 1, 1997. The bill provides that, upon enactment, obsolete or unnecessary ICC regulatory functions would be repealed and residual functions would be transferred partly to a newly established independent Intermodal Surface Transportation Board (Board) within the U.S. Department of Transportation (DOT) and partly to the Secretary of Transportation (Secretary). When the FMC sunsets, its remaining functions would be transferred to the new Board.

The bill also significantly reduces regulation of surface transportation industries in this country. It sorts through the panoply of laws currently administered by the ICC and repeals or modernizes those that have become outdated. In the process, the bill revamps subtitle IV of title 49 of the United States Code, commonly known as the Interstate Commerce Act (ICA), by dividing it into two parts:

Part A (comprised of revised chapters 101 through 119 of title 49), which contains the provisions applicable to transportation by rail or pipeline (other than oil, gas, or water pipelines), and

Part B (new chapters 113 through 149 of title 49), which contains the provisions applicable to the trucking, intercity bus, domestic water carriage, and transportation intermediary (broker and freight forwarder) industries.

Part A would be administered by the Board. Part B would be administered by the Secretary except for those provisions that are more adjudicatory in nature, which would be administered by the Board.

As reported, the bill would authorize appropriations of $8.4 million for the Board for FY 1996, and $12 million in each of FYs 1997 and 1998. The Committee notes the appropriation levels for FY 1997 and 1998 were set prior to accepting an amendment to sunset the FMC. Therefore, amended authorization levels will be needed to ensure the transferred FMC functions can be carried out effectively.

Background and Needs

Established by the Act to Regulate Commerce in 1887, the ICC is the oldest independent regulatory agency. It originally was created to protect shippers from the monopoly power of the railroad industry. Between 1840 and 1880, the U.S. railroad network grew from 2,800 to 93,000 miles. This boom brought indiscriminate construction, market manipulation, rate abuses, and discriminatory practices against certain types of freight customers and passengers. In some areas, rail monopolies were able to direct the fate of communities, shippers, and entire industries.

Farmers and consumers demanded rate controls, and merchants and shippers demanded equal treatment with their competitors. Congress responded by enacting a ten-page bill. It stipulated that all rates be "reasonable and just" and prohibited certain railroad practices, such as rate discrimination, price fixing, and rebating. A five-member Commission was set up to administer the Act.

Various subsequent Acts through 1920 broadened and strengthened the ICC's regulatory authority over railroads. The ICC's regulatory authority also expanded to other modes, including pipeline transportation by the Hepburn Act of 1906. Responding to railroad complaints about unfair competition, Congress brought the nascent truck and bus industries under the ICC's regulatory authority by the Motor Carrier Act of 1935. In 1940, inland and coastal water carriers were brought under the jurisdiction of the ICC, which then consisted of eleven members. At one point, the ICC even regulated telegraph, telephone, cable and radio communications, as well as standard time.

By the 1960's, the ICC's regulatory structure was viewed as unduly burdensome and restrictive and the federal government moved to create new agencies to deal with emerging transportation problems. In 1967, the DOT was created and virtually all of the ICC's safety oversight functions were transferred to the new agency. However, economic regulation remained at the ICC. By 1970, in spite of the ICC's continued broad regulatory powers, six major northeastern railroads and one midwestern line were bankrupt. Bankruptcies continued throughout the rail industry, including the collapse of more Northeastern railroads which ultimately resulted in the creation of Conrail. In 1977, citing the ineffectiveness of the ICC, President Carter created a task force that was charged with streamlining the ICC and reducing regulation.

Since the mid-1970's, the following laws have been enacted which have contributed to the substantial deregulation of transportation industries:

RAILROAD INDUSTRY

The first major rail regulation reform legislation, The Railroad Revitalization and Regulatory Reform (4–R) Act of 1976, provided (as a national policy goal) for the earnings of "adequate revenues" by rail carriers as functioning private sector companies. This was to be accomplished by providing increased flexibility for rail carriers to raise or lower rates to conform to market forces.

The Staggers Rail Act of 1980 provided far-reaching comprehensive reform, providing the rail industry with many of the same market freedoms available to other competitive industries. The Staggers Act provided for increased competition by removing antitrust immunity over collective ratemaking, reducing rail rate regulation, and easing the way for mergers. The Staggers Act is considered the most successful rail transportation legislation ever produced, resulting in the restoration of financial health to the rail industry.

MOTOR CARRIER INDUSTRY

The Motor Carrier Act of 1980 promoted greater rate setting flexibility and began to ease entry restrictions in the trucking industry. As a result, 25,000 new carriers started up between 1982 and 1990.

The Household Goods Transportation Act of 1980 promoted competition by increasing carrier freedom to set prices and quality options. Consumers appear to have been well-served by increased competition. Since 1980, complaints to the ICC concerning household goods carriers have dropped each year.

The Bus Regulatory Reform Act of 1982 encouraged industry entrance and growth, allowed easier abandonment of unprofitable routes, and increased flexibility in rate setting. Deregulation of the bus industry resulted in an increase in small companies in operation. However, public preference for private automobile travel, competitive lower cost fares made available by airline deregulation, and Amtrak subsidization together have resulted in discontinuation of regular-route bus service to many communities.

The Surface Freight Forwarder Deregulation Act of 1986 further deregulated the non-household goods segment of the motor carrier industry. The transportation intermediary sector has flourished. By 1991, the ICC had licensed more than 7,000 brokers, up from the 50 authorized prior to enactment of the new law.

The Negotiated Rates Act of 1993 provided a mechanism to resolve the on-going undercharge crisis which arose when bankruptcy trustees or receivers demanded payments from shippers for the difference between a negotiated rate for transportation services which were paid in full by a shipper and the higher tariff rate on file at the ICC.

In further response to the undercharge problem, the Trucking Industry Regulatory Reform Act (TIRRA) of 1994 reduced tariff filing requirements in the motor carrier industry by eliminating filed tariff requirements for independently set rates. This reduced paperwork burdens and precluded future undercharge claims for that category of traffic. Further, TIRRA expanded the ICC's exemption authority to embrace many aspects of the trucking industry.

In view of the deregulation legislation described above and the resultant decline in ICC responsibilities, Congress cut the number of ICC Commissioners from 11 to 5 in 1985. Since 1980, the agency's appropriations have dropped from $80 million to $30.3 million in the FY 1995 DOT Appropriations bill. During that same period of time, the ICC's staffing has dropped from nearly 2,000 employees to approximately 350. Today, approximately 300 employees remain at the ICC.

Even with the considerable deregulation of the surface transportation industries, the ICC continues to maintain a formidable regulatory presence. The ICC determines policy through its rulemaking and adjudicative proceedings to ensure the effective administration of the Interstate Commerce Act (ICA), related statutes, and regulations. The ICC maintains jurisdiction over the rail industry, certain pipelines, barge operators, bus lines, freight forwarders, household goods movers and approximately 60,000 "for-hire" motor carriers.

LEGISLATIVE HISTORY

S. 1396, the Interstate Commerce Commission Sunset Act of 1995, was introduced by Chairman Pressler and Senator Exon on November 3, 1995. As stated earlier, this legislation is in direct response to the FY 1996 Budget Resolution which assumes the elimination of the ICC and the FY 1996 DOT Appropriations bill, H.R. 2002, which provides no funding for the ICC effective December 31, 1995. Specifically, the Conference Report to H.R. 2002, P.L. 104–50, provides $13,379,000 for the first quarter of FY 1996 for salaries and expenses as well as severance and closing costs of the ICC and $8,421,000 is appropriated to an unspecified successor agency.

During an open executive session on November 9, 1995, the full Committee reported favorably an amendment in the nature of a substitute to S. 1396. The bill, as reported, identifies which of the ICC's functions should continue to be carried out, and by which agency or agencies, within the constraints of the funding approved. The Committee also approved two amendments to the substitute amendment. One amendment, offered by Senator Burns, would allow an individual with a background in ''agriculture'' to be appointed to the Board. The other amendment, offered by Chairman Pressler, and Senators Hollings, Lott, Breaux, and Exon, would sunset the FMC effective January 1, 1997, at which time two members with professional standing and demonstrated knowledge in the fields of maritime transportation or its regulation would be added to the Board.

SUMMARY OF MAJOR PROVISIONS

As reported, the bill continues the deregulation theme of the past 15 years by providing further regulatory reductions in the surface transportation industries. Overall, the bill is designed to repeal unnecessary regulations and authorize the transfer of residual functions to DOT. Many broader transportation policy proposals viewed by the Committee to be re-regulatory were not included in this bill. The Committee intentionally limited the bill to matters related to sunsetting the ICC and FMC and transferring essential functions to a successor.

The bill as reported includes the following major provisions:

1. Governmental Efficiency and Savings.—The bill would reduce the Federal bureaucracy by eliminating two free-standing government agencies—the ICC and FMC. Numerous unnecessary or obsolete regulations would be repealed and residual functions would be redistributed within the DOT. It creates an independent ''Intermodal Surface Transportation Board'' (Board) to administer regulations retained over rail carriers, certain pipeline carriers, and the maritime, and domestic water carrier industries. The Board also would maintain limited adjudicatory responsibilities over the motor carrier, freight forwarder, transportation broker, and intercity bus industries. All non-adjudicatory functions of these latter industries would be transferred to the Secretary.

The Committee notes the increasing emphasis on intermodalism and providing seamless transportation via rail, motor, and water modes in the transportation industry. The Committee believes the remaining Federal government oversight of these transportation modes should be housed within a single agency with the expertise and perspective to view the transportation industry as increasingly intermodal. The Committee believes the consolidation of remaining ICC and FMC functions in the Board accomplishes this goal.

By placing the Board within DOT, it would be relieved of separate administrative costs currently borne by both the ICC and the FMC. The Committee intends that, given the very limited appropriations level for the Board and the numerous responsibilities assigned to the Board, the costs of these administrative functions would be absorbed by DOT. The Board would be instructed to carry out within six months a study to determine the authority necessary to assess fees to cover the costs incurred to carry out the Board's functions.

The Committee understands that upon enactment of this bill, the transferor agency, the ICC, shall determine which functions to be transferred to the Secretary are new functions to DOT and which functions are currently performed by DOT. The DOT would then have to agree with the ICC as to which functions transfer and which do not. Any disagreements would be resolved by the Office of Management and Budget. Since the bill makes no change to current civil service severance personnel laws, the transfer of personnel will occur under existing rules. ICC personnel that perform new functions transferred to DOT have transfer rights. ICC personnel that perform functions which are not transferred to DOT, such as motor carrier dispute resolution, have no transfer rights.

The Committee intends that any personnel and functions transferred to DOT outside the Board should be integrated and performed within DOT's existing FY 1996 funding allocation. The Committee expects that any ICC personnel transferred to DOT could be funded from the transfer of existing fees derived from transferred ICC functions. The FY 1996 DOT Appropriations Bill, P.L. 104–50, permits the Secretary to utilize any fees collected to fund ICC personnel transferred to DOT. This bill provides the Secretary similar authority.

The ICC has informed the Committee that, upon preliminary review of the motor carrier licensing, insurance, data collection and NAFTA enforcement functions transferred to DOT in this bill, it expects that approximately 60 ICC personnel will be transferred to DOT (separate from the Board). These are the employees that would perform functions new to DOT. The ICC estimates that these personnel will result in a cost of $3.743 million for the remainder of FY 1996 (annualized cost of $5 million). The ICC estimates that continued fees in FY 1996 will total $5.27 million.

2. Rail Transportation.—Beyond weeding out outdated and unnecessary provisions, the bill generally does not attempt to substantively redesign rail regulation. Rather, it would preserve the careful balance put in place by the 4R Act and the Staggers Act that led to a dramatic revitalization of the rail industry while protecting significant shipper and national interests.

Outdated Regulatory Provisions. The bill would eliminate many outdated, unnecessary, and burdensome regulatory requirements and restrictions on the rail industry. These include, for example, the elimination of all regulation of rail passenger transportation, all tariff filings, tariffs for non-agricultural commodities, special provisions favoring recyclable commodities, and restrictions against carriers transporting their own commodities.

The bill would also eliminate Federal certification and review procedures for State regulation of intrastate rail transportation. However, nothing in this bill should be construed to authorize States to regulate railroads in areas where Federal regulation has been repealed by this bill. Further, the Committee intends that those States regulating intrastate rail transportation continue to be required to regulate only in a manner consistent with the ICA. The railroad system in the United States is a nationwide network. The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless" service that is essential to its shippers and would waken the industry's efficiency and competitive viability.

National Rail Network.—The bill would retain those provisions needed to preserve an efficient national rail network comprised of numerous individual carriers. These include Federal regulatory oversight of line constructions, line abandonments, line sales, leases, and trackage rights, mergers and other consolidations (under a broad public interest standard and with ongoing regulatory oversight), car supply and interchange, antitrust immunity for certain collective activities (including pooling of equipment and services), competitive access, financial assistance, feeder line development, emergency service orders, and recordation of equipment liens.

Shipper Protections.—In reviewing the ICA, the Committee is impressed with the positive effects rail deregulation has had on the railroad industry since enactment of the Staggers Act and has carefully avoided alteration of the fundamental premises of the Staggers Act in this bill. At the same time, however, the Committee is aware captive shippers—particularly grain shippers whose traffic originates from country elevators—continue to need protections under the ICA.

The bill as reported would retain provisions that are necessary to protect rail shippers. These include the common carrier obligation, regulatory oversight of the reasonableness of rail practices, maximum rate regulation for captive traffic, advance notice of rate increases, and rate tariffs for agricultural commodities and fertilizer.

The Committee believes the common carrier obligation is particularly critical, especially in light of the needs of grain shippers and others who continue to experience difficulties in obtaining rail cars and service. According to a September 1995 report by the U.S. Department of Agriculture entitled "Assessing the Impact of Railcar Availability on Grain Prices," rail car shortages lower farm prices and reduce the competitiveness of U.S. grain exports.

Rate Reasonableness.—The bill includes several new provisions regarding the handling of challenges to the reasonableness of rates charged on captive traffic, to ensure that such cases are resolved more expeditiously. The Committee is concerned non-coal shippers, particularly grain shippers and smaller volume bulk shippers, have been deterred from utilizing the rate reasonableness provisions in the ICA in part because of the complex nature of the full stand-alone cost presentation adopted by the ICC and the resulting expenses associated with pursuing that test.

The bill would require the Board to complete the pending Non-Coal Rate Guidelines proceeding, ICC Docket Ex Parte No. 347 (Sub-No. 2), establishing a simplified method to be used where a full stand-alone cost presentation is impractical, within one year. Also, the bill instructs the Board to adopt procedures that would avoid undue delay in both the discovery and evidentiary phases of rate cases and to otherwise expedite proceedings. The bill would require the Board to establish procedures, within 6 months, for expeditiously processing all rate cases. It would require the Board to decide individual rate complaints within 6 months after the close of the administrative record in cases in which a stand-alone cost presentation is made, and within 3 months after the close of the record in cases using a simplified evidentiary presentation.

The Committee intends the simplified methodology directed to the Board to complete would apply to cases in which the full stand-alone cost presentation, which encompasses elaborate evidentiary presentations, are impractical. The Committee seeks to assure that the rate complaint process is accommodating of small cases. However, the Committee does not intend to erode the Constrained Market Pricing principles adopted by the ICC for full stand-alone cost presentations.

Market Dominance.—Before the ICC can consider whether a rail rate is unreasonably high, the rail carrier must be shown to have market dominance over the transportation to which the challenged rate applies. The statute defines "market dominance" as "an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies." The ICC has adopted various rules governing market dominance presentations, including rules which permit the consideration of intermodal and intramodal transportation and product and geographic competition.

The bill does not preclude the Board from considering product and geographic competition and recognizes the Commission's policies are based on principles that have been upheld by the courts. However, the Committee expects the Board to take into account all competitive transportation factors that affect the rate at issue, by adding a clarifying provision to reflect that the statutory standard could also be implemented through the consideration of the availability of other economic and practical transportation alternatives.

Exemption Authority.—The exemption provisions of the ICA have directed the ICC to exempt persons, classes of persons, transactions, and services from regulation when it determines regulations are not necessary to protect shippers from abuse of market power. The ICC has used exemption authority aggressively over the past 15 years, deregulating the transportation of various commodities and types of rail service when competitive factors have been found to restrain the economic behavior of rail carriers. These exemptions have proven highly beneficial to shippers and railroads.

This bill continues the exemption provision that has allowed the ICC to identify and respond to changing circumstances and needs more quickly and precisely than the legislative process permits, so as to limit the remaining regulatory activities to those situations where they are necessary to advance the national rail transportation policy. The bill would also strengthen that exemption authority, and enhance its effectiveness, by modifying it in several respects.

First, it would clarify that the Board may use the exemption authority to change the way in which a provision applies (and not simply whether it applies). Second, it would place time limits on Board deliberations as to whether to grant or revoke an exemption. Third, it would clarify the exemption revocation process, by directing the Board to consider "the availability of other economic transportation alternatives, in addition to any other factors it deems relevant," when considering a request that regulation is needed and therefore an exemption should be revoked. This is to help focus the disposition of revocation requests on practical transportation alternatives. Specifically, in considering a revocation request, the Board should continue to require demonstrated abuse of market power that can be remedied only by reimposition of regulation or that regulation is needed to carry out the national transportation policy. This would include examination by the Board of all competitive transportation factors that restrain rail carriers' actions and that affect the market for transportation of the particular commodity or type of service. In addition, the Board would consider any dilatory railroad practices in determining whether damages should be awarded when an exemption is revoked.

Labor protection.—The bill as reported continues statutory labor protection arrangements for Class I railroad employees adversely affected by mergers, abandonments, and other inter-carrier transactions such as transfers of trackage rights or rail lines. Under the current ICC administrative standards ("New York Dock"), this means one year of labor protection for each year of service, up to a maximum of six years. While some Committee members support fundamental policy changes in this area, it was agreed to postpone amendments in this area in an effort to lessen controversy over the bill.

Currently under Section 10901 (line sales and small carrier transactions), labor protection is optional on proposals to construct and operate new railroad lines by non-carriers, and, as interpreted by the ICC, protection has rarely been imposed. To encourage transactions conducted under Section 10901—transactions which result in the continuation of rail service to communities that otherwise could lose service—the bill establishes a special rule for transactions involving non-Class I rail carriers.

This new rule allows any Class II or Class III freight rail carrier or non-carrier that is not owned or controlled by a Class I rail carrier (and is not a commuter, switching or terminal railroad) to acquire, operate or provide transportation over a railroad line pursuant to the provisions of Section 10901. Section 11343 et seq. of the Act does not apply to such transactions. The rule limits the salary protection the Board could impose to a severance amount not to exceed one year's salary to employees who are adversely affected and who are not offered full time employment. If the Board, as under the current standards, believes that "exceptional circumstances" exist, it then has a range from notification to one year of salary protection—not six years—to apply for the protection of displaced rail employees. The bill also includes a standard that labor protections may only be imposed when to do so is consistent with the public interest. It should be clear, however, that the public interest standard should not result in the imposition of labor protection conditions in circumstances other than were found to warrant such protection under the class exemption procedures adopted and applied by the ICC after the enactment of the Staggers Act.

In the Committee's view, railroad operations and the jobs that go with them must be preserved on light density lines wherever possible. The Committee expects the Board to continue the existing exemption practice.

Rail-Shipper Transportation Advisory Council.—The Committee recognizes that certain affected groups—most notably smaller shippers and smaller railroads—believe that further legislative changes are necessary or desirable to more fully protect their interests. However, the Committee is concerned that such additional measures would necessarily cast an overly broad regulatory net and even then might be ineffective to solve the underlying concerns (e.g. car supply, market access, etc.). The Committee believes that the better approach, at this juncture, is to establish a mechanism which would (1) define and prioritize the most compelling problems faced by shippers and others today, (2) encourage those problems to be addressed without resorting to reregulation or some other governmental action in an area that might be more effectively addressed in the private sector, and (3) in the event those concerns could not be addressed in the private sector, develop a systematic record demonstrating specific problems along with specific recommendations for legislative or regulatory action. In short, the Committee decided to turn to practicing small shippers and small railroads to further pinpoint not only whether, but what kind of, government intervention might be warranted.

This bill would create a Rail-Shipper Transportation Advisory Council (Council) for that purpose. The Council would be funded primarily by private sources. It would be composed of 15 members, appointed by the Board's Chairman, to report to the Board, the Secretary, and Congress on rail transportation policy issues it deems significant. The Council would be directed to consider specific issues including rates, car supply (in consultation with the existing Grain Car Council), competition, and effective procedures for addressing shipper concerns to the greatest extent possible within private sector mechanisms.

3. Motor Carrier Transportation.—

Open Entry.—The bill would eliminate all vestiges of restrictive entry barriers, based either on a gauging of public demand or need for the service or on protecting existing carriers in a market. However, the bill would retain needed safety oversight and insurance requirements, by converting the existing ICC licensing program into a DOT-administered registration program based solely on a carrier's fitness to operate. The bill would retain State involvement in the process through the existing single-State registration system, but would direct the Secretary to study and report back to Congress on the possibility of merging that system into a new streamlined Federal system.

Common carriage.—The bill would eliminate the regulatorily-created distinction between common and contract motor carriers. Such categorizations have lost their meaning, because most carriers now operate in a dual capacity. Under the bill, all motor carriers would have a common carrier obligation, but would be free to contract for individual shipments.

Tariffs and rate regulation.—The bill would eliminate tariffs and rate regulation for general trucking. Such regulation, introduced in the 1930's when trucking was a new and struggling industry, has outlived all usefulness. The trucking industry today is a mature, highly competitive industry where competition disciplines rates far better than tariff filing and regulatory intervention. Only 2 specialized categories of trucking operations would still require tariffs and be subject to potential rate regulation. These are residential household goods movements (discussed below) and certain joint motor-water shipments involving Alaska, Hawaii, or U.S. territories (where the water portion of the movement is generally not as competitive and where advance notice and certainty of rates is particularly needed).

Operations.—The bill would retain the collective activity provisions that allow trucking companies to pool and coordinate their services. It would also retain the existing useful background commercial rules for the trucking industry, involving such matters as owner-operator leasing, lumping, and cargo liability. However, it directs the Secretary to conduct a study and report to Congress within a year as to whether the cargo liability provisions should be updated.

The Committee also contemplates that, while the Federal government would establish the background rules applicable to trucking operations, the ICC's traditional function of informally resolving disputes in these areas would not be continued. The bill enables aggrieved parties to take such disputes directly to the courts.

Undercharges.—The bill would continue, and transfer to the Board, the undercharge resolution functions of the ICC. The Committee expects this work to taper off within a few years, as the rash of undercharge claims that arose in the late-1980's and early 1990's are concluded. To further assist in the resolution of those undercharge claims, this bill would extend the unreasonable practice relief provided in the Negotiated Rates Act of 1993 by removing the September 30, 1990 cut-off date for qualifying shipments.

4. Household Goods Transportation.—

Tariffs and rate regulation.—The bill would retain special regulatory provisions for residential household goods movements in view of the special consumer impacts associated with them. Because the individual householder moves infrequently, usually has little market information about such moves, and generally lacks bargaining power, the householder has little self-help ability in a transaction with a large personal impact. To prevent unfair rate advantages and abuses against this least-sophisticated class of shippers, the bill would retain tariff and rate reasonableness requirements for residential household goods moves. It would prohibit carriers from circumventing fair and uniform rates for residential moves by offering contract rates when dealing directly with the householder. The bill would retain the highly successful binding-estimate provisions applicable to household goods moves.

Rate oversight would be limited to residential moves, which is where the special consumer considerations apply with most force. Office and trade show moves would be treated no differently than general freight.

Mandatory arbitration.—Because the ICC's informal dispute resolution services would no longer be available, the bill would require household goods carriers to offer impartial arbitration of disputes arising out of individual residential moves. This would provide an inexpensive and effective means of dealing with the typical household goods loss or damage claim, which is often so small that any litigation requirement becomes unduly expensive and burdensome.

5. Intercity Bus Transportation.—The bill would remove most remaining regulatory requirements and restrictions from the intercity bus industry. The safety-oriented carrier registration and insurance requirements would be applied to the bus industry, and certain limited restrictions against subsidized carriers competing

with unsubsidized carriers would be retained. Also, the bill would retain the special public-interest merger standards and advance approval procedures for the intercity bus industry.

6. Transportation Intermediaries.—(Brokers and Freight Forwarders). The bill would continue the licensing (registration) and bond requirements for transportation brokers, which are needed to protect the public from unscrupulous brokers. The bill would also apply the same requirements to all freight forwarders. Currently freight forwarders of shipments other than household goods are not required to obtain a license from the ICC, but they are required to maintain a minimum level of cargo liability insurance. The insurance requirement has been difficult to monitor and enforce without a Federal licensing requirement. By extending the registration requirement to all freight forwarders, the bill would fill an inappropriate regulatory gap.

7. Pipeline Transportation.—The bill would retain regulation of pipeline transportation insofar as it involves commodities other than oil and gas (which are regulated by the Federal Energy Regulatory Commission) or water (which is not now regulated). Because the pipeline industry has the same monopolistic characteristics as the rail industry, such regulatory oversight must be retained to protect against abuses.

8. Domestic Water Carriage.—The bill would effectively deregulate domestic water carriage in the contiguous-States markets, where there is ample competition to render such regulation unnecessary. However, the bill would retain residual authority over such water carriage for preemptive purposes, to prevent this transportation from being subjected to regulation under other laws.

The extent of maritime regulation that would be transferred to the Board is as yet undetermined. The Committee expects there will be intervening legislation within the next year paring back the FMC's functions before they are transferred to the Board. The bill requires the Chairman of the Board to meet with the Chairman of the FMC to develop a plan for the orderly transition of FMC functions to the Board. The Chairman of the Board would then submit the plan to the Director of the Office of Management and Budget, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Transportation and Infrastructure not later than six months after enactment of this bill. The Committee expects this plan would address any changes in FMC functions that may be legislated after enactment of this bill, the effect of this transfer on Board funding requirements, personnel matters, and other matters relevant to the transfer of remaining FMC functions on January 1, 1997.

9. Tow-Truck Operations.—This bill would correct a serious problem that has been an unintended consequence of legislation last year preempting State and local motor carrier regulation. Specifically, the bill would enable State and local governments to regulate the price and related conditions of non-consensual tows by tow-truck operators, so as to preclude exorbitant prices and unreasonable conditions from being imposed on unwilling parties.

10. Intermodal Transportation.—This bill would remove all existing restrictions that specifically limit or preclude intermodal ownership and intermodal operations. Moreover, by combining the re-

maining functions of the existing transportation regulatory bodies, the bill should further foster intermodalism.

11. Transportation of Foreign Carriers Under NAFTA.—The bill would retain the registration and insurance requirements for foreign motor carriers operating in the United States pursuant to the North American Free Trade Agreement. The bill would transfer the ICC's existing oversight and enforcement responsibilities in this area to DOT.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 1995.

Hon. LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1396, the Interstate Commerce Commission Sunset Act of 1995.

Enacting S. 1396 would affect both direct spending and receipts; therefore, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

PAUL VAN DE WATER
(For June E. O'Neill, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1396.
2. Bill title: Interstate Commerce Commission Sunset Act of 1995.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 9, 1995.
4. Bill purpose: The bill would terminate the Interstate Commerce Commission (ICC) by:

Eliminating various functions of the commission;

transferring the remaining functions to a newly created Intermodal Surface Transportation Board (the board) within the Department of Transportation (DOT) and to the Federal Highway Administration (FHWA);

authorizing appropriations of $13.4 million for fiscal year 1996 to close down the ICC and $8.4 million for fiscal year 1996 and $12 million for each of fiscal years 1997 and 1998 for the board;

updating railroad and motor carrier regulations to reflect the termination of the ICC and other revisions; and requiring registration by motor carriers every five years rather than only once.

In addition, the bill would create a Rail-Shipper Transportation Advisory Council and require the Secretary of Transportation to study the possibility of consolidating the federal and state motor carrier registration systems into one system.

Finally, the bill would terminate the Federal Maritime Commission on January 1, 1997, and transfer is remaining functions to the Intermodal Surface Transportation Board.

5. Estimated cost to the Federal Government: The bill would authorize the appropriation of about $13 million to shut down the ICC and $32 million for the board over the next three fiscal years. In addition, S. 1396 would change the amount of civil and criminal penalties collected by the federal government, and thus would affect spending from the Crime Victims Fund; however, CBO expects any change in revenues and direct spending would be insignificant.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Additional Revenues and Direct Spending						
Revenues: Estimated revenues	....	(1)	(1)	(1)	(1)	(1)
Direct spending:						
Estimated budget authority	....	....	(1)	(1)	(1)	(1)
Estimated outlays	....	....	(1)	(1)	(1)	(1)
Spending Subject to Appropriations						
Spending under current law:						
Budget authority [2]	33	22	....	....	....	....
Outlays	38	23	2	....	....	....
Proposed changes:						
Authorization changes	....	....	12	12	....	....
Estimated outlays	....	....	11	12	1	....
Spending under S. 1396:						
Authorization level	33	22	12	12	....	....
Estimated outlays	38	23	13	12	1	....

[1] Less than $500,000.

[2] The 1996 appropriations bill for the Department of Transportation and related agencies, which was recently enacted (Public Law 104–50), provides $8.4 million for the board and $13.4 million to shut down the ICC—amounts equal to the authorization levels in S. 1396.

The costs of this bill fall within budget function 400.

In addition to the amounts shown in the table, the bill would allow FHWA and the board to continue collecting registration and other fees currently collected by the ICC; spending of these fees is subject to appropriations action. The deregulatory provisions of S. 1396 would reduce annual fee collections and spending from such collections from about $8 million to about $5 million. However, by requiring motor carrier registration every five years rather than only once, the bill would cause fee collections and registration costs to rise over time as current registrations expire. Because CBO expects fee collections and spending from the fees to be equal, the changes in the amount of fees collected should have no impact on the budget.

6. Basis of estimate: Revenues and direct spending.—If S. 1396 is enacted into law, the amount of civil and criminal penalties collected by the federal government would change. The bill would deregulate some of the activities for which the federal government

currently collects civil penalties but also would increase the fines for some of the remaining activities. The ICC currently collects about $500,000 annually in both civil and criminal penalties, and we estimate that the net change in such penalties would be significantly less than $500,000 a year.

Criminal penalties are deposited in the Crime Victims Fund and are spent the following year. Because the amount of criminal penalties collected would change, spending from the Crime Victims Fund would also change. The amounts involved, however, would be insignificant.

Spending Subject to Appropriations.—This estimate assumes that the full amounts authorized to be appropriated for the ICC and the board would be appropriated for each fiscal year. (As shown in the table, the amounts authorized for 1996 have been appropriated in Public Law 104–50.) The outlay estimates are based on the historical spending rate for the ICC.

The ICC and DOT have not determined how many people would be transferred if this bill is enacted into law. According to federal regulations, if a function is transferred from one agency to another, the people performing that function are automatically transferred. CBO assumes that 160 to 190 people would be transferred to DOT—100 to 130 people to the board and about 60 people to FHWA. If fewer than 160 people are transferred from the ICC to DOT, the ICC might need more than $13 million to shut down the agency (because of higher severance payments). If significantly more than 190 people are transferred, the board and FHWA might need more funding than authorized in S. 1396 to handle the additional personnel. If additional funds are not provided, the board and FHWA would have to cut back on spending and possibly lay off some personnel. S. 1396 would allow the board to use any unobligated ICC funds for severance costs.

Fees.—The bill does not authorize any additional funds to be appropriated to FHWA for the functions and personnel transferred to the agency. Such funding would come from the fees currently collected by the ICC. The ICC collections about $8 million of fees annually for both rail and motor carrier activities, but the collection would initially drop if this bill is enacted because some of the functions that generate fees would be eliminated. However, fee collections would later increase as motor carriers would have to register every five years rather than once. Fees assessed to railroads by the board would total less than $1 million a year.

FHWA would need to collect at least $5 million a year from motor carrier activities to pay the 60 people that would likely be transferred and to carry out its new functions. FHWA has doubts about its ability to collect sufficient funds initially to cover these costs under the ICC's fee structure. If the fees are not increased, additional funds would have to be appropriated or FHWA would have to cut back in other areas.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting S. 1396 would change the amount of civil and criminal penalties collected by the federal government and spending from the Crime Victims Fund.

Therefore, pay-as-you-go procedures would apply to the bill. However, the changes in both receipts and outlays would be less than $500,000 a year.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts	0	0	0

8. Estimated cost to State and local governments: S. 1396 contains a number of provisions that would affect state and local governments. One provision would result in direct costs to such governments, primarily in the form of lost future revenues. Other sections would expand the ICC's regulatory scope to include several types of vehicles previously exempt and attach penalties to certain existing regulations. The bill also has elements that would ease requirements and regulatory burdens on state and local transportation agencies. While there is some uncertainty over the impact of the bill's deregulatory measures at the state and local level, CBO estimates that the bill would likely result in a net cost to state and local governments. This cost, however, would be insignificant. Provisions with the most direct effect on state and local governments are discussed below.

Potential Costs.—S. 1396 would preempt a state's ability to collect taxes or fees on interstate bus travel. The state of Oklahoma is currently the only state with such a tax in place. The Oklahoma Tax Commission estimates that the tax generates approximately $400,000 a year in revenue for the state. The state of Utah recently approved a tax on interstate bus service that is scheduled to go into effect January 1, 1996. The Utah Tax Commission estimates the tax would raise about $150,000 in revenue annually.

S. 1396 would place certain types of vehicles currently exempt from motor carrier regulation by the ICC under the regulation of the replacement Intermodal Surface Transportation Board. To the extent that state or local governments operate vehicles over state lines that carry school children or teachers, transport less than 16 commuters to and from work, provide transportation entirely within a municipality or contiguous municipalities, or are performing emergency towing functions, these governments could be subject to new safety and insurance requirements. Two factors, however, would mitigate the cost such governments might incur. First, some of these vehicles are already subject to safety regulation under subtitle VI of title 49. Second, the bill would authorize the Secretary to grant exemptions from the registration and insurance requirements where appropriate.

The bill would require states to cooperate in the enforcement of certain registration and insurance requirements. While current law requires state participation in these efforts, it does not include a penalty for non-compliance. S. 1396 would make a state's annual grant allocation for commercial vehicle safety programs conditional on its pledge of cooperation in enforcing these registration and financial responsibility requirements. The amount available for these grant programs in fiscal year 1996 is $77.2 million.

Potential savings.—S. 1396 contains at least two provisions that would directly benefit state governments. The bill would exempt interstate transportation services funded with federal mass transportation block grants or grants for rural, elderly, or disabled populations from federal requirements governing minimum financial responsibility as long as they meet state standards. According to state transit officials and interest groups contacted, this provision would make running these services substantially easier and cheaper for state and local governments. While the exemption would confer measurable benefit to individual agencies and operations, its overall impact would be limited because of the small size and number of carriers (roughly 200 nationwide) affected.

The bill would also eliminate the federal certification procedures for states seeking to regulate intrastate rail transportation. Twenty-two are currently certified by the ICC. These states would no longer be required to seek approval to amend their practices or need to reapply for certification every five years. The resulting savings would be small.

9. Estimate comparison: None.

10. Previous CBO estimate: On November 6, 1995, CBO transmitted a cost estimate for H.R. 2539, the ICC Termination Act of 1995, as ordered reported by the House Committee on Transportation and Infrastructure on November 1, 1995. S. 1396 and H.R. 2539 are quite similar, and CBO's federal estimates for the two bills are essentially identical.

The primary difference between the state and local estimates is that S. 1396 directs the Secretary to study the desirability of creating a single, federal on-line motor carrier registration and information system. In contrast, H.R. 2539 requires that the Secretary actually establish one. A consolidated system would move the current Single State Registration System functions to the federal level and close off about $89 million annually in fees to states.

11. Estimate prepared by: Federal cost estimate: John Patterson, and Stephanie Weiner. State and local government cost estimate: Karen McVey.

12. Estimate approved by: Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

A wide variety of businesses and consumers would be covered and potentially impacted by this bill. They include rail carriers, certain pipeline carriers (those transporting commodities other than oil, gas, or water), trucking companies, intercity bus companies, water carriers, freight forwarders, and transportation brokers, and their various customers. Government employees who work for the ICC and FMC would also be affected by this bill.

ECONOMIC IMPACT

This bill would significantly reduce regulation of surface transportation industries and concomitantly reduce regulatory costs; for that reason, the overall economic impact of the bill should be beneficial. Some limited regulation would be retained to assure a safe and adequate transportation network and to protect transportation customers who do not have competitive alternatives available to them. Accordingly, the bill would have either a neutral or beneficial economic impact on transportation customers and the public at large. There would be an adverse economic impact on employees of the ICC and FMC, many of whom would lose their employment.

PRIVACY

This bill would have no adverse impact on the personal privacy of individuals.

PAPERWORK

With one exception, no new regulation and no additional paperwork requirements would be created by this bill. To the contrary, the bill would substantially reduce paperwork requirements by eliminating tariffs for most surface transportation. The exception is that freight forwarders of commodities other than household goods would be reregulated to fill an inappropriate regulatory gap. The primary impact on those carriers would be the requirement to register with the Secretary.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of this bill is the "Interstate Commerce Commission Sunset Act of 1995."

Sec. 2. Amendment of title 49

This section provides that, unless otherwise stated, the amendments or repeals in this bill are to title 49 of the United States Code.

Sec. 3. Table of sections

This section contains a table of sections for the bill. This bill is organized into the following seven titles:

Title I would terminate the ICC and FMC and repeal those provisions of the Interstate Commerce Act (ICA) that would not be retained in Part A of subtitle IV, title 49, United States Code.

Title II would establish the Intermodal Surface Transportation Board (Board).

Title III would amend those provisions of the ICA that would remain in Part A to further modernize and streamline rail regulation.

Title IV would enact Part B of subtitle IV, title 49, United States Code, containing the reduced and modernized oversight provisions applicable to transportation by motor carriers, water carriers, brokers, and freight forwarders.

Title V would make conforming amendments to other laws to reflect the termination of the ICC and the transfer of functions to the Board and the Secretary.

Title VI would authorize appropriations for the new Board.

Title VII would set the effective date for this bill.

TITLE I—TERMINATION OF THE INTERSTATE COMMERCE COMMISSION; REPEAL OF OBSOLETE AND UNNEDESSARY PROVISIONS OF LAW

SUBTITLE A—TERMINATION OF COMMISSION

Section 101. Agency terminations

This section would terminate the ICC upon the transfer of its remaining functions to the Board and the Secretary, on January 1, 1996. It would terminate the FMC one year later, on January 1, 1997.

Sec. 102. Savings provisions

Subsection (a) would preserve all orders, determinations, rules, regulations, licenses, and privileges currently in effect until changed by the Board or the Secretary, within their respective jurisdictions. Subsection (b) would preserve proceedings pending before the ICC, insofar as they relate to functions that are retained, and would provide for their transfer to the Board or the Secretary. Subsection (c) would preserve pending suits and subsection (d) would preserve actions by or against the ICC or its officials. Subsection (e) would substitute the Board or the Secretary, as applicable, for the ICC in suits involving a transferred function.

Sec. 103. References to the ICC in other laws

This section would treat references to the ICC in other Federal laws as references to the Board or Secretary, as applicable, and would treat references to the ICC as a governmental agency as references to the Board.

Sec. 104. Transfer of functions

This section would transfer ICC personnel and property to the Board or Secretary, as applicable, and unexpended ICC funds to the Board. The Committee intends that the functions are assumed in accordance with Congressional intent.

Sec. 105. References to the FMC in other laws

This section provides that, effective January 1, 1997, references to the FMC in other Federal laws would be deemed to refer to the Board.

SUBTITLE B—REPEAL OF OBSOLETE, ETC. PROVISIONS

Sec. 121. Repeal of provisions

This section would repeal those portions of the ICA that are not retained in Part A of Subtitle IV. These repeals includes numerous rail provisions that would be removed from the statute; those motor and water provisions that would be amended and reenacted in Part B; those motor and water provisions that would be removed from the statute; and various administrative provisions relating to the ICC that would be removed from the statute. The repeals from Part A include the following provisions:

(1) Section 10101—which contains the national transportation policy (applicable to transportation other than rail)—would be moved to Part B as section 13101.

(2) Section 10322—which contains various procedural provisions for nonrail proceedings—would be removed, allowing the Board and the Secretary to fashion appropriate procedures for future handling of the transferred functions.

(3) Section 10326—which contains time limits for rail rulemaking proceedings—would be removed as unnecessary.

(4) Section 10327—which contains procedural provisions for rail adjudicatory proceedings—would be removed, allowing the Board to fashion appropriate procedures for the future.

(5) Section 10328—which governs intervention in ICC proceedings—would be removed from Part A, allowing the Board to determine intervention in its proceedings. A portion would be moved to Part B, as section 13302, to provide for public participation in proceedings involving functions transferred to the Secretary.

(6) Subchapter III of chapter 103 (sections 10341–10344)—which provides for joint boards with State regulatory bodies—would be removed as outdated.

(7) Subchapter IV of chapter 103 (sections 10361–10364)—which authorizes the now-defunct Rail Services Planning Office—would be removed. It is outdated and could not be accommodated within the budgetary constraints of the Board. A conforming amendment would be made to 49 U.S.C. 24505(b).

(8) Subchapter V of chapter 103 (sections 10381–10388)—which authorizes the Office of Rail Public Counsel—would be removed. That function could not be continued given the budgetary constraints of the Board.

(9) Section 10502—which relates to rail express carriers—would be removed as outdated. There are no rail express carriers today.

(10) Section 10504—which provides a partial exemption for rail mass transportation—would be removed. It would no longer be needed because this bill would remove federal regulation of rail passenger transportation.

(11) Subchapters II, III and IV of chapter 105 (sections 10521–10531, 10541–10544, and 10561)—which establish jurisdiction over transportation and services of motor carrier and brokers, domestic water carriers, and freight forwarders, respectively—would be moved, in large part, to Part B as subchapter I, II, and III, respectively, of chapter 135.

Some of the provisions would be removed, however, as unnecessary and inappropriate. This includes many of the exemption provisions of subchapter II, which would no longer be needed because the only Part B requirements applicable to such transportation would be those addressed to safety and insurance. Placing such requirements on this transportation may not be unduly burdensome; indeed, this transportation is already subject to safety regulation under subtitle VI of title 49 where vehicle size requirements are met. In any event, the Secretary would be authorized under section 13505(e) to relieve such previously exempt transportation from the registration and insurance requirements, where appropriate, and the Committee expects that the Secretary would promptly do so where appropriate. Accordingly, sections 10526 (miscellaneous motor carrier transportation exemptions) and 10528 (mixed loads of regulated and unregulated property) would be removed from the ICA, as well as all of section 10525 (transportation entirely in one state) except for subsection (e). (The discretionary exemption authority contained in section 10525(a)–(d) would be subsumed into the broad exemption power of section 13505. The finding contained in former section 10525(f), to the extent not mooted by the repeal of section 10525(a)–(d), is implicit in the Hawaiian exemption retained in section 13505.)

Other provisions of subchapter II that would be removed include section 10524 (which exempts motor carriage furthering a primary business other than transportation); section 10527 (which requires written contracts pertaining to certain interstate agricultural truck movements); section 10529 (which provides for close regulatory oversight over the trucking operations of otherwise-exempted agricultural cooperative associations); and section 10531 (a discretionary individual exemption procedure for mass transit operators).

The exemption provisions of subchapter III of chapter 105 would also be removed, because the jurisdiction over domestic water carriage would be residual and preemptive and would not entail active regulation. Accordingly, sections 10542 (exempt bulk transportation), 10543 (exempt incidental water transportation), and 10544 (miscellaneous water carrier transportation exemptions) would be removed from the ICA.

(12) Section 10705a—which governs rail joint-rate surcharges and cancellation—would be removed. This section has already achieved its purpose (to provide carriers an avenue of relief from unremunerative joint rates) and would not be needed with the elimination of most rail tariffs.

(13) Section 10710—which directs the elimination of rate (or other forms of) discrimination against transportation of recyclable materials—would be removed. Future concerns can be brought to the Board under the general provisions regarding discrimination.

(14) Section 10711—which merely confirms the independent effect of various provisions of the ICA—would be removed as unnecessary.

(15) Section 10712—which provides a mechanism for inflation-based rate increases—would be removed. It has not been used and similar provisions would remain available under section 10707a.

(16) Most of subchapter II of chapter 107 (sections 10722–10726, 10278, 10731, and 10733–10734)—which contain various special rate provisions—would be removed. Sections 10722–10724—which allow free or reduced rates for certain categories of passengers, for charitable purposes, for emergency situations, and for carrier employees—would not be needed

with the elimination of tariffs dictating uniform rates. Section 10725—which allows special rates for assembling and distribution services—would be removed for the same reason. Section 10726—which prohibits higher rates for shorter movements over the same route as a longer movement at a lower rate—is counter to the highly individualized pricing appropriate to the rail industry today. Section 10728—which expressly permits separate pricing for distinct rail services—is similarly unnecessary.

Section 10731—which establishes special rate caps for recyclable or recycled materials—would be removed so as not to require rail shippers generally to cross-subsidize such traffic. Section 10733—which deals with motor carrier rates for transporting recyclable materials—would be removed for the same reason. Section 10734—which allows tariffs to contain premium charges for special services—would be unnecessary with the elimination of most tariffs in part A.

Several provisions of subchapter II of chapter 107 would not be removed from the ICA. Section 10721—relating to government traffic—would be retained in Part A and also replicated in Part B as section 13711. Section 10730—relating to cargo liability—would be retained in Part A. Section 10732—allowing sellers of food and grocery products to use a uniform zone delivered pricing system—would be moved to Part B as section 13712. Similarly, section 10735—relating to estimates and service guarantees for household goods movements—would be moved to Part B as section 13704.

(17) Section 10743—which governs the extension of credit by carriers—would be removed as undue regulation.

(18) Section 10746—which prohibits a rail carrier from transporting freight that it produces or owns—would be removed. Such restrictions are not warranted and have been easily circumvented.

(19) Section 10748—which imposes requirements related to rail transportation of livestock—would be removed as unnecessary.

(20) Section 10749—which addresses (a) mutual arrangements between carriers and communications companies and (b) the types of carriers that can be used by a household goods freight forwarder—would be removed as undue regulation.

(21) Section 10751—which addresses carrier business entertainment expenses—would be removed as unnecessary.

(22) Section 10764—which requires the filing of certain intercarrier arrangements—would be removed as undue regulation.

(23) Section 10765—which imposes regulatory requirements upon certain domestic water carrier transportation, including domestic shipments moving through another country—would be removed as undue regulation.

(24) Section 10766—which governs certain freight forwarder traffic agreements—would be removed as undue regulation.

(25) Section 19767—which governs certain motor carrier billing and collecting practices—would be moved to Part B as section 13707.

(26) Subchapter V of chapter 107 (sections 10781–10786)—which provides for government valuation of railroad property (a regulatory function that has not been performed in many years)—would be removed as unnecessary. Property values contained in carriers' annual reports are sufficient for most purposes and any valuation issues that arise in individual cases may be adequately addressed in the context of such cases.

(27) Section 10908—which governs discontinuing or changing interstate passenger train and ferry services by carriers other than Amtrak—would be removed as unnecessary. In a conforming change, 49 U.S.C. 24705(d) would also be repealed.

(28) Section 10909—which governs discontinuing or changing intrastate passenger train and ferry services by carriers other than Amtrak—would be removed as unnecessary.

(29) All of subchapter II of chapter 109 (sections 10921–10936)—which contains licensing provisions for motor carrier, domestic water carrier, broker, and freight forwarder operations—would be removed from Part A. Portions would be moved to Part B and portions removed from the statute altogether. More specifically, sections 10921–10925 (licensing provisions), 10927 (insurance requirements), and 10934 (household goods agents) would be moved to Part B as sections 13901–13905 (with safety-oriented registration substituted for economic-based restrictive licensing), 13906, and 13907, respectively. Because the licensing requirement as applied to domestic water carriers does not include safety oversight, it would not be included in the new registration requirements.

Sections 10926 (transfer of licenses) would be removed as inconsistent with the carrier-specific nature of the safety-focused registration. Sections 10928–10929 (temporary licensing of motor and domestic water carriers) and 10932 (various grandfather provisions) would be removed as unnecessary under the new registration system. Sections 10930 (intermodal restrictions), 10933 (discontinuing household goods freight forwarder service), and 10935 (discontinuing intrastate bus service) would be removed as undue regulation. Sections 10931 (licensing of intrastate transportation) and 10936 (preemption of state regulation of intrastate bus fares on interstate routes) would be removed as unnecessary given the broad preemptions contained in section 14501 of Part B.

(30) Section 11102—which expressly authorizes the ICC to specify classifications for different nonrail carriers—would be removed as unnecessary.

(31) Section 11105—which governs rail carrier arrangements for refrigeration or heat services to protect freight—would be removed as undue regulation.

(32) Section 11106—which authorizes the use of regulatory identification plates on motor vehicles—would be removed as undue.

(33) Section 11107—which governs leasing arrangements between motor carriers and owner-operators—would be moved to Part B as section 14102.

(34) Section 11108—which addresses discrimination against domestic water carriers—would be removed as unneeded in today's competitive domestic water carrier industry.

(35) Section 11109—which addresses what is commonly known as "lumping practices" involving the loading and unloading of motor vehicles—would be moved to Part B as section 14103.

(36) Section 11110—which provides for performance standards of household goods carriers—would be moved to Part B as section 14104.

(37) Section 11111—which governs the use of citizen-band radios on buses—would be removed as undue regulation.

(38) Section 11126—which addresses the distribution of rail coal cars—would be removed. The more general car-supply provisions of the statute are adequate to cover this subject.

(39) Section 11127—which contains certain emergency authority over freight forwarder operations—would be removed as unnecessary.

(40) Section 11142—which provides for prescribing a uniform accounting system of nonrail carriers—would be removed as unnecessary.

(41) Section 11161—which established the now-defunct Railroad Accounting Principles Board (RAPB)—would be removed. The RAPB has completed its work and been disbanded.

(42) Section 11162—which directed the RAPB to establish cost accounting principles for railroads—would be removed. That work has been completed.

(43) Section 11163—which directed the ICC to implement the RAPB rail cost accounting principles—would be removed. That objective also has been met. The Committee intends that the new Board generally adhere to the RAPB's principles and recommendations as set forth in the RAPB's Railroad Accounting Principles—Final Report (dated September 1, 1987), as did the ICC.

(44) Section 11164—which requires advance certification by the ICC of individual railroads' accounting systems—would be removed as an undue regulatory procedure.

(45) Section 11167—which required the RAPB to issue a report on its work—would be removed. That report has been issued.

(46) Section 11168—which authorized appropriations for the RAPB for the years 1981–1983—would be removed.

(47) Section 11304—which governs the recording of security interests in trucks and buses—would be moved to Part B as section 14301.

(48) Section 11321—which restricts intermodal ownership of water carriers by rail carriers—would be removed in order to break down barriers between modes and promote intermodal transportation.

(49) Section 11323—which restricts ownership of other carriers by a household goods freight forwarders—would be removed as unduly restrictive.

(50) Section 11345a—which governs consolidations by nonrail carriers—would be moved to Part B as section 14303 and limited in its application to intercity bus companies.

(51) Section 11346—an expedited rail merger provision that has expired—would be removed.

(52) Section 11349—which provides for temporary authorization of nonrail mergers—would be removed as unnecessary.

(53) Section 11350—another expired rail merger provision—would be removed.

(54) Subchapter IV of chapter 113 (sections 11361–11367)—which governs changes in a railroad's financial structure—would be removed as undue regulation.

(55) Section 11502—which addresses conferences and joint hearings with state authorities—would be removed as no longer needed.

(56) Section 11503a—which governs state and local tax discrimination against motor carrier property—would be moved to Part B as section 14502.

(57) Section 11505—which authorizes States to bring certain injunctive actions—would be removed. As it relates to unlawful rail line abandonments or construction projects, it is unnecessary and duplicative of federal enforcement authority. As it relates to the cessation of service by a household goods freight forwarder, it would become outdated because the underlying restrictions would be removed.

(58) Section 11506—which establishes a single-state registration system for motor carriers—would be moved to Part B as section 14506. (It should be noted, however, that in section 13908, the Secretary would be directed to conduct a study of whether, and to what extent, this system should be merged into the federal carrier registration and insurance filing systems.)

(59) Section 11507—which addresses the status of prison-made property—would be removed as unneeded.

(60) Section 11704—which provides a private right of action for unlawful cessation of household goods freight forwarder service—would be removed because the underlying restrictions would be removed.

(61) Section 11708—which provides a private right of action for unlicensed motor carrier and household goods freight forwarder operations—would be moved to Part B as section 14707.

(62) Section 11709—which contains specific liability provisions for unauthorized railroad security issuances—would be removed as unnecessary.

(63) Section 11711—which provides a dispute resolution program for household goods carriers—would be moved to Part B as section 14708.

(64) Section 11712—which contains tariff reconciliation rules designed to avoid undercharge claims where possible—would be moved to Part B as section 14709.

(65) Section 11902a—which sets specific penalties for "lumping" violations—would be moved to Part B as section 14905.

(66) Section 11905—which sets penalties for carrying passengers without charge—would be removed because the underlying restrictions would also be removed.

(67) Section 11906—which contains specific penalties for evading regulation of motor carriers or brokers—would also be removed. The general penalties are adequate.

(68) Section 11908—which sets penalties for unauthorized cessation of service by a household goods freight forwarder—would be removed because the underlying restrictions would also be removed.

(69) Section 11911—which sets specific penalties for unauthorized rail securities issuances—would be removed. The general penalties are adequate.

(70) Section 11913a—which sets penalties for a railroad's failure to obtain the certification of its cost accounting system—would be removed because the underlying certification requirement would also be removed.

(71) Section 11917—which contains specific penalties for "weight-bumping" by household goods carriers—would be moved to Part B as section 14912.

Sec. 122. Coverage of certain entities under other, unrelated acts not affected.

This section provides that this bill would not affect the status of employers for purposes of the Railroad Retirement Act, the Railroad Unemployment Insurance Act, or the Railroad Retirement Tax Act.

Title II—Intermodal Surface Transportation Board

Subtitle A—Organization

Section 201. Amendment to subchapter I

This section would replace subchapter I of chapter 103 (49 U.S.C. 10301–10311), which contains the organizational provisions for the ICC, with those needed for the Board. Amended 49 U.S.C. 10301 (Establishment of Board) would establish the Intermodal Surface Board. The Board would be placed within the Department of Transportation, for administrative support.

The Board would start out as a 3-member body, but would increase to a 5-member body in 1997, when it inherits the remaining FMC functions. The Board would be bipartisan, with members appointed by the President, confirmed by the Senate, and removable by the President only for neglect of duty or malfeasance in office. At least 2 members would be required to have a background in rail or motor transportation, transportation regulation, or agriculture. At least 1 member would be required to have private-sector professional or business experience. Starting in 1997, at least 2 members would be required to have professional standing and demonstrated knowledge in the fields of maritime transportation or its regulation. Board members could not have an interest in, or official relation with, any carrier, and could not engage in any outside business.

Seats on the Board would be for 5-year fixed terms. A member would not be allowed to serve more than two terms, nor remain in office for more than one year after the term expires. Board seats would initially be filled by the current sitting ICC Commissioners. On January 1, 1997, the 2 new seats would be filled by 2 sitting FMC Commissioners of different political parties, in order of the length of term remaining.

The President could appoint one of the Board members as the Chairman, with the administrative and supervisory powers for managing the Board. Significantly, the Board would retain the ICC's longstanding independent litigating authority and the Board could submit appropriations requests to Congress independently.

Under amended 49 U.S.C. 10302 (Functions), the Board could perform all the functions of the ICC, except those repealed or transferred to the Secretary by this Act, and to perform the transferred functions of the FMC as of January 1, 1997. Amended 49 U.S.C. 10303 (Administrative provisions) would make the Board an independent agency, free from supervision or direction by DOT. The open meeting requirements of the Sunshine Act would apply to the Board. The Board would be authorized to appear in its own right, and be represented by its own attorneys, in any civil suits related to a function vested in the Board. It could regulate the admission of individuals to practice before it. Its budget request would be sent to Congress, and the Board could communicate with Congress and make legislative requests without interference.

Amended 49 U.S.C. 10304 (Annual report) would require the Board to submit an annual report to Congress on the Board's activities.

Sec. 202. Administrative support.

This section directs the Secretary to provide administrative support to the Board. While the Board is authorized to receive a separate appropriation and the Board's Chairman has discretion as to how those resources are allocated, the Committee intends that the goal of minimizing administrative bureaucracy should be advanced. For example, once established within DOT, the Board should not be required to maintain separate payroll, facilities and supplies, or equal employment opportunity offices. The Committee expects the administrative functions assumed by the Secretary to be covered by DOT's current funding authorization.

Sec. 203. Reorganization

This section authorizes the Board's Chairman to change the organizational structure of the Board from that of the ICC or the FMC.

Sec. 204. Transition plan for Federal Maritime Commission functions.

This section provides for the Board's Chairman to meet with the Chairman of the FMC to develop a plan, within 6 months, for the orderly transition of functions from the FMC to the Board. The Chairman would then submit the plan to the Director of the Office of Management and Budget, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Transportation and Infrastructure not later than six months after enactment of this Act. The Committee expects this plan would address any changes in FMC functions that may be legislated after enactment of this Act, the effect of this transfer on Board funding requirements, personnel matters, and other matters relevant to the transfer of remaining FMC functions on January 1, 1997.

SUBTITLE B—ADMINISTRATIVE

Sec. 211. Powers

This section would amend 49 U.S.C. 10321—enumerating the ICC's powers—in order to apply to the Board, to condense the language, and to remove references to entities and matters not regulated under Part A.

Sec. 212. Commission Action

This section would amend 49 U.S.C. 10324—governing the ICC's adjudicatory actions—to apply to the Board. Section 10324(c) (making ICC actions enforceable unless stayed or postponed) would be replaced with the reopening and final agency action provisions from 49 U.S.C. 10327(g)–(h).

Sec. 213. Service of notice in commission proceedings

This section would amend 49 U.S.C. 10329—governing service of notice in ICC proceedings—to apply to the Board, to remove provisions regarding entities not regulated under Part A, and to make other conforming changes.

Sec. 214. Service of process in court proceedings

This section would amend 49 U.S.C. 10330—governing service of process on regulated carriers in court proceedings—to apply to the Board, to remove provisions regarding entities not regulated under Part A, and to make other conforming changes.

Sec. 215. Study on the authority to collect charges

This section would direct the Board to conduct a study, within 6 months, on the authority needed to assess and collect fees (other than user fees) and annual charges that would be sufficient to make the Board self-funding.

Sec. 216. Federal Highway Administration rulemaking

This section would direct the Federal Highway Administration to conduct a rulemaking dealing with issues related to truck driver fatigue, and imposes time limits for that rulemaking.

TITLE III—RAIL AND PIPELINE TRANSPORTATION

Sec. 301. General changes in references to commission, etc.

This section would make certain generic changes to those provisions of subtitle IV that are retained in part A. It would replace all mention of the ICC and ICC Commissioners with the Board and Board members, respectively, and all mention of subtitle IV with part A. It also would supply a heading and index of chapters for Part A.

Sec. 302. Rail transportation policy

This section would amend 49 U.S.C. 10101a—which states the rail transportation policy underlying Part A—to add an additional national policy of providing expeditious remedies for traffic and facilities lacking effective transportation competition. The Committee recognizes that where competition exists, statutory remedies are not necessary. However, when competition does not exist, timely remedies are needed to protect captive shippers against market abuse. The Committee intends the Board to handle all matters brought before it in a timely manner.

Sec. 303. Definitions

This section would amend 49 U.S.C. 10102—which defines terms used in Part A—to remove terms that are not pertinent to Part A, to update and clarify the term "rail carrier", and to remove references to passenger transportation.

Sec. 304. General jurisdiction.

This section would amend 49 U.S.C. 10501—which establishes jurisdiction over rail and pipeline transportation and intermodal rail-water or pipeline-water transportation—in several respects. The exclusive nature of the Board's regulatory authority under Part A would be clarified (paragraph 1). The Board's rail jurisdiction would be limited to freight transportation (paragraph 2 and 4), because rail passenger transportation today (other than service by Amtrak, which is not regulated under the ICA) is now purely local or regional in nature and should be regulated (if at all) at that level.

Outdated references to express and sleeping car carriers, which no longer exist, would be removed (paragraph 3). References to the regulation of intrastate rail transportation would be updated (paragraph 5 and 6).

Sec. 305. Railroad and water transportation connections and rates

This section would amend 49 U.S.C. 10503—which provides for rail-water connections—to remove references to passenger transportation.

Sec. 306. Authority to exempt rail carrier and motor carrier transportation

This section would amend 49 U.S.C. 10505—which authorizes discretionary exemptions from the application of the provisions of Part A—to comport with the scope of Part A, by excluding entities and matters not regulated under Part A (paragraph 1, 2, 4, and 5) and by embracing pipeline carriage (paragraph 1). The exemption authority would be further modified to afford the Board flexibility to change the way in which a provision applies (and not simply whether it applies) through exemption (paragraph 1).

A 180-day time limit would be imposed for decisions to grant (paragraph 2) or revoke (paragraph 3) an exemption in response to concerns that both exemption applications and revocation applications have not been processed with sufficient expedition. The revocation provision would also be clarified (paragraph 3), by directing the Board to revoke an exemption to the extent that regulation is needed and by directing the Board to consider the availability of other economic transportation alternatives, among other factors. In considering monetary damages upon revocation of an exemption, the Board would be directed to take into account any dilatory railroad practices. Outdated restrictions against intermodal ownership would be removed (paragraph 5).

Sec. 307. Standards for rates, classifications, etc.

This section would amend 49 U.S.C. 10701—which requires that a carrier's classifications, rules, practices, through routes, and divisions of joint rates be reasonable, that pipeline rates also be reasonable, and that rates (of both rail and pipeline carriers) not unreasonably discriminate against connecting carriers—to remove provisions addressed to entities not regulated under Part A.

Sec. 308. Standards for rates for rail carriers

This section would amend 49 U.S.C. 10701a—which requires that rail rates be reasonable if the carrier has market dominance over the transportation involved—to impose time limits on the Board's handling of rate reasonableness cases (and to make other changes of a conforming nature). It would require the Board to complete the pending Non-Coal Rate Guidelines proceeding to establish, within 1 year, a simplified method to be used where a full stand-alone cost presentation is impractical. Within 6 months, the Board would be required to establish procedures for expeditiously processing rate cases. It would be required to decide individual rate complaints within 6 months after the close of the administrative record in cases in which a stand-alone cost presentation is made, and within 3 months after the close of the record in cases using the simplified methodology the bill directs the Board to adopt.

Sec. 309. Authority for carriers to establish rates, classifications, etc.

This section would amend 49 U.S.C. 10702—which states a carrier's right to establish its own rates, classifications, rules, and practices—to remove unnecessary language and provisions regarding entities not regulated under Part A.

Sec. 310. Authority for carriers to establish through routes

This section would amend 49 U.S.C. 10703—which directs rail and pipeline carriers to establish through routes with other such carriers, and also directs rail carriers to establish through routes with water common carriers—to remove provisions regarding entities not regulated under Part A and to make other conforming changes.

Sec. 311. Authority and criteria for prescribed rates, classifications, etc.

This section would amend 49 U.S.C. 10704—under which rates, classifications, rules, and practices can be prescribed to correct violations of Part A—in various respects. Most significantly, the Board's authority to review the reasonableness of a rate, classification, rule, or practice would be limited to instances where it receives a complaint (paragraph 8). An unnecessary restatement of requirements for a complaint would be removed (paragraph 9). A provision to protect existing rate relationships between commodities, ports, or geographic areas would also be removed (paragraph 6).

A long-past initial deadline for establishing railroad revenue adequacy standards and an unnecessary statement of the Board's authority to revisit that standard would be removed (paragraph 4). A similar initial deadline for annually determining which rail carriers are earning adequate revenues would also be removed (paragraph 5). Finally, provisions regarding entities not regulated under part A (paragraph 6 and 7), and other unnecessary language (paragraph 1 and 3) would be removed, and conforming changes would also be made (paragraph 1 and 2).

Sec. 312. Authority for prescribed through routes, joint classifications, etc.

This section would amend 49 U.S.C. 10705—under which through routes (and the conditions under which they must be operated) and joint rates (and the division of the joint rate received by each participating carrier) can be prescribed—in several respects. A reference to tariffs would be replaced with a reference to proposed rate changes (paragraph 5), given that tariff requirements would be eliminated for most transportation.

Provisions regarding carriers not regulated under part A would be removed (paragraph 3, 4, 6 and 9), as would unnecessary language (paragraph 1). Other conforming changes would reflect the removal of authority to investigate a proposed rate on the agency's own initiative (paragraph 7, 8) and the removal of federal regulatory authority over rail passenger transportation (paragraph 2).

Sec. 313. Antitrust exemption for rate agreements

This section would amend 49 U.S.C. 10706—which allows discretionary approval of certain collective activity by carriers and confers antitrust immunity on such approved activity. It would remove as unnecessary a requirement for periodic review of approvals granted for collective activities (paragraph 9). This change would not affect the Board's authority to reconsider an approval at any time as the need arises. Similarly, it would remove a requirement for the Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, to periodically assess (and report to the Board on) collective activity authorized by the Board (paragraph 9). Such assessments and reports may be made at any time.

Other changes would remove expired provisions (paragraph 1–2), remove provisions regarding entities not regulated under Part A (paragraph 6-8), correct a typographical error (paragraph 3), supply an actual date (paragraph 5), and make conforming changes (paragraph 4).

Sec. 314. Investigation and suspension of new rail carrier rates, etc.

This section would amend 49 U.S.C. 10707—under which new rail rates, classifications, rules, and practices may be investigated and suspended—to reflect the elimination of the tariff requirement for most transportation under Part A and the removal of authority for a Board-initiated investigation of a proposed rate (paragraph 1).

The amendments would also remove regulatory oversight over rate decreases (paragraph 2-3). Finally, the amendments would remove unnecessary regulatory procedural requirements (paragraph 4).

Sec. 315. Zone of rail carrier rate flexibility

This section would amend 49 U.S.C. 10707a—which establishes a zone of rate flexibility (ZORF) that gives carriers limited freedom to increase rates with immunity from suspension or ICC-instituted investigations. The ZORF itself would be removed (paragraph 3 and 6), because it has outlived its usefulness. However, the so-called Long-Cannon Factors to be considered when evaluating the reasonableness of rates would be retained (paragraph 6), along with criteria for investigating a proposed rate increase (paragraph 7). In addition, language would be clarified (paragraph 2 and 4), a date that has already been complied with would be removed (paragraph 1), and reference to a repealed provision would be removed (paragraph 5).

Sec. 316. Investigation and suspension of new pipeline carrier rates

This section would amend 49 U.S.C. 10708—under which new nonrail rates, classifications, rules, and practices may be investigated and suspended—to remove authority for Board-initiated investigations (paragraph 1), to remove provisions regarding carriers not regulated under Part A (paragraph 3), to reflect the elimination of tariff requirements for most transportation (paragraph 1), and to make other conforming changes (paragraph 2).

Sec. 317. Determination of market dominance.

This section would amend 49 U.S.C. 10709—which governs the determination of whether a carrier has market dominance over traffic and thus whether the rates for that traffic are subject to the maximum rate regulation—in several respects. To clarify Congressional intent regarding market dominance, the Board would be directed to consider the availability of other economic transportation alternatives (paragraph 1). The cost-recovery percentage, which was meant to serve as an adjustable jurisdictional floor, would be removed (paragraph 3) because as a practical matter it has not been capable of calculation due to data limitations. In addition, the phase-in of the revenue-variable cost percentage floor for market dominance would be deleted (paragraph 3); the phase-in has already served its purpose of dampening the precipitousness of rate increases prompted by the Staggers Rail Act of 1980. Finally, conforming changes would be made (paragraph 2).

Sec. 318. Contracts

This section would amend 49 U.S.C. 10713—which authorizes rail carriers to enter into contracts for transportation that is thereby removed from regulation—to retain the filing requirements for, and regulatory restrictions upon, rail transportation contracts only for agricultural products (paragraph 2, 5–8, and 12). Except as to those commodities, the contract limitations represent unneeded and unduly burdensome regulation, particularly given the elimination of tariffs for other traffic. Any egregious equipment and discrimination concerns could be brought to the Board under other remaining statutory provisions.

In the case of agricultural commodity contracts, only a contract summary, and not the contract itself, will be filed. In other respects, jurisdiction over agricultural commodity contracts remain as under the Staggers Act. The purpose for retaining this jurisdiction is primarily due to concerns brought before the Committee about enforcement of the common carrier obligation.

The amendments would also clarify that, in the absence of tariffs, a rate would be immune from regulation only if the shipper had expressly waived its regulatory rights and remedies (paragraph 10). The Railroad Contract Rate Advisory Service would be removed in light of the Board's budgetary constraints (paragraph 4 and 11). Unnecessary language would be eliminated (paragraph 9 and 11) and conforming language changes would be made (paragraph 1 and 3).

Sec. 319. Government traffic

This section would amend 49 U.S.C. 10721—which provides special treatment for rates paid by the United States government—to reduce the language to what would be needed in the absence of tariff rates.

Sec. 320. Rates and liability based on value

This section would amend 49 U.S.C. 10730—which authorizes carriers to charge rates under which cargo liability is limited to an amount specified in advance by the shipper—to remove redundancies and provisions regarding carriers not regulated under Part A (paragraph 1 and 2) and for conforming changes (paragraph 3 and 4).

Sec. 321. Prohibitions against discrimination by common carriers

This section would amend 49 U.S.C. 10741—which prohibits kickbacks and unreasonable discrimination—only for conforming changes, thus retaining the present standards governing discrimination by common carriers.

Sec. 322. Facilities for interchange of traffic

This section would amend 49 U.S.C. 10742—which requires a carrier to provide reasonable facilities for interchange of traffic—only for conforming changes.

Sec. 323. Liability for payment of rates

This section would amend 49 U.S.C. 10744—which governs liability for payment as between the shipper and the consignor or consignee—to remove provisions regarding carriers not regulated under Part A and to make conforming changes.

Sec. 324. Continuous carriage of freight

This section would amend 49 U.S.C. 10745—which prohibits carrier combinations or arrangements that prevent the continuous movement of freight—only for conforming changes.

Sec. 325. Transportation services of facilities furnished by shipper

This section would amend 49 U.S.C. 10747—under which carrier allowances for shipper-furnished services and equipment or facilities may be prescribed—to reflect the elimination of most tariffs (paragraph 1) and to limit the Board's authority to instances in which a complaint is filed (subsection 2) .

Sec. 326. Demurrage charges

This section would amend 49 U.S.C. 10750—which directs carriers to set demurrage charges and demurrage rules so as to fulfill the nation's needs with respect to freight car supply, use, and distribution—only for conforming changes. The bill retains jurisdiction over rail demurrage in recognition of the fact that consignees require regulatory recourse to ensure against the imposition of unwarranted demurrage charges.

Sec. 327. Transportation prohibited without a tariff

This section would amend 49 U.S.C. 10761—which prohibits (non-contract) rail transportation without a tariff—to limit the tariff requirement to the transportation of agricultural products and fertilizer, and to remove the tariff requirement for all other transportation. Because the transportation costs are a substantial component of the market price of agricultural products, the advance publication and certainty of rates that is provided by public tariffs is particularly important in determining the value of those commodities. Shippers of other commodities, however, generally do not rely on tariff information. Their transportation rate concerns are adequately met by either a competitive transportation market or the other rate protections that are retained in the statute.

Sec. 328. General elimination of tariff filing requirements

This section would similarly amend 49 U.S.C. 10762—which governs rail tariffs—to apply only to the transportation of agricultural products and fertilizer, and to remove the requirement of filing those tariffs with the Board. It would direct the Board to establish, within 180 days, appropriate rules for publishing, keeping open, furnishing to the public, and retaining for public inspection such tariffs.

Sec. 329. Designation of certain routes.

This section would amend 49 U.S.C. 10763—which governs shipper routing of rail shipments—only for conforming changes.

Sec. 330. Authorizing construction and operation of railroad lines

This section would amend 49 U.S.C. 10901—under which the construction of new rail lines and the operations of new rail carriers must be authorized—to reduce the level of employee protection that may be imposed by the Board on smaller carriers and noncarriers. While employee protective conditions have not often been required for such new operations, the minimum level of protection available, if protection was imposed, was inordinately high (up to 6 years of salary protection). As amended, the maximum level of protection that could be imposed on smaller carriers and noncarrier entities is reduced to a more realistic level: advance notice (the same requirement imposed on other industries) and up to one year's salary protection, unless the parties voluntarily agree otherwise. In addition, labor protection arrangements could only be imposed when consistent with the public interest.

Sec. 331. Authorizing action to provide facilities

This section would amend 49 U.S.C. 10902—which requires carriers to provide adequate, efficient, and safe facilities to meet their service obligations—only for conforming changes.

Sec. 332. Authorizing abandonment and discontinuance

This section would amend 49 U.S.C. 10903—under which carriers must receive advance authorization to abandon a rail line—only for conforming changes.

Sec. 333. Filing and procedure for applications to abandon or discontinue

This section would amend 49 U.S.C. 10904—which contains the procedural requirements for applications to abandon a rail line—to remove outdated provisions for rail restructuring plans sponsored by the Secretary and to make conforming changes.

Sec. 334. Exceptions

This section would amend 49 U.S.C. 10907—which exempts spur, industrial, team, switching, and side tracks from the approval requirement for constructions and abandonments—only for conforming changes.

Sec. 335. Railroad development

This section would amend 49 U.S.C. 10910—containing the feeder line development forced-sale provisions—to remove expired and executed provisions and to supply a date.

Sec. 336. Providing transportation, service, and rates

This section would amend 49 U.S.C. 11101—which sets forth a carrier's obligation to provide service on reasonable request—to require that a rail carrier establish common carriage rates and other service terms (of the type requested for specified service between specified points) within 30 days of a reasonable request. A carrier may not refuse to provide a common carriage rate on grounds that there is a transportation contract covering the traffic. The amended section also requires a carrier to provide 20 days' advance notice of rate increases.

Sec. 337. Use of terminal facilities

This section would amend 49 U.S.C. 11103—under which a carrier may be compelled to provide competitive access to terminal facilities or switching arrangements—only for conforming changes.

Sec. 338. Switch connections and tracks

This section would amend 49 U.S.C. 11104—which requires rail carriers to maintain switch connections with other carriers—only for conforming changes.

Sec. 339. Criteria

This section would amend 49 U.S.C. 11121—which provides regulatory oversight over rail car service—to reflect the elimination of most tariffs (paragraph 2), and to provide for the Board to consult with the National Grain Car Council as necessary (paragraph 4). The National Grain Car Council is an advisory group formed by the ICC in 1994, composed of representatives of railroads of varying size, shippers, manufacturers, and government officials. Conforming changes are also made.

Sec. 340. Rerouting traffic on failure of rail carrier to serve public

This section would amend 49 U.S.C. 11124—under which traffic can be ordered to be rerouted when a carrier cannot provide service—only for conforming changes.

Sec. 341. Directed rail transportation

This section would amend 49 U.S.C. 11125—under which a carrier can be directed to operate the lines of an incapacitated carrier—only for conforming changes.

Sec. 342. War emergencies; embargoes

This section would amend 49 U.S.C. 11128—under which preferences and priorities in traffic can be directed in wartime—only for conforming changes.

Sec. 343. Definitions for subchapter III

This section would amend 49 U.S.C. 11141—which provides definitions for subchapter III of chapter 111, title 49 (covering carrier reports and records)—to limit coverage to entities regulated under Part A.

Sec. 344. Depreciation charges

This section would amend 49 U.S.C. 11143—under which appropriate depreciation charges are prescribed—to remove a reference to entities not regulated under Part A and to make other conforming changes.

Sec. 345. Records, etc.

This section would amend 49 U.S.C. 11144—which provides for prescribing and inspecting carrier records—to remove references to entities not regulated under Part A, to reflect an earlier repeal (paragraph 6), and to make other conforming changes.

Sec. 346. Reports by carriers, lessors, and associations

This section would amend 49 U.S.C. 11145—which addresses carrier reports—to remove provisions regarding entities not regulated under part A and to make conforming changes.

Sec. 347. Accounting and cost reporting

This section would amend 49 U.S.C. 11166—under which rail carrier expense and revenue accounting and reporting requirements may be prescribed—to remove a reference to a repealed provision, make other conforming changes, and condense the language.

Sec. 348. Securities, obligations, and liabilities

This section would amend 49 U.S.C. 11301—which requires advance approval for certain railroad securities issuances and financial obligations—only for conforming changes. Because the ICC has exempted such transactions as a class, this is residual authority only.

Sec. 349. Equipment trusts

This section would amend 49 U.S.C. 11303—which provides for centralized recordation of liens on railroad cars, locomotives, and other rolling stock—to require continuation of the ICC's current railway equipment register and to give equal effect to foreign registration of such equipment.

Sec. 350. Restrictions on officers and directors

This section would amend 49 U.S.C. 11322—which contains restrictions on officers and directors holding positions with multiple carriers—to import a referenced definition from a repealed provision (paragraph 2) and to make conforming changes.

Sec. 351. Limitation on pooling and division of transportation or earnings

This section would amend 49 U.S.C. 11342—under which carrier arrangements to pool traffic, services, or earnings can be authorized and immunized from other laws—to remove provisions regarding entities not regulated under Part A and to make conforming changes.

Sec. 352. Consolidation, merger, and acquisition of control

This section would amend 49 U.S.C. 11343—under which advance approval is required for certain intercarrier mergers, control acquisitions, or other forms of consolidations—to remove provisions regarding entities not regulated under part A.

Sec. 353. General procedure and conditions of approval for consolidation, etc.

This section would amend 49 U.S.C. 11344—which contains the administrative procedures, decisional criteria, and conditioning authority for carrier consolidation proposals—to remove unnecessary and inappropriate limitations on railroad acquisitions of motor carriers (paragraph 4) and on a railroad's ability to provide motor carrier transportation prior or subsequent to rail transportation (paragraph 7). It would also remove outdated provisions regarding restructurings that are sponsored by the Secretary (paragraph 6) or that involve only passenger carriers (paragraph 3 and 6). In addition, motor carrier provisions would be removed (paragraph 1 and 3) and other conforming changes would be made (paragraph 2 and 5).

Sec. 354. Rail carrier procedure for consolidation, etc.

This section would amend 49 U.S.C. 11345—which further specifies administrative procedures for handling rail carrier consolidation proposals—to provide for receiving the comments of the Secretary and the Attorney General at the same time as other parties and to make conforming changes.

Sec. 355. Employee protective arrangements

This section would amend 49 U.S.C. 11347—which provides employee protection for approved rail consolidations—only for conforming changes.

Sec. 356. Authority over noncarrier acquirers

This section would amend 49 U.S.C. 11348—which covers noncarriers that acquire control of carriers—for conforming changes only.

Sec. 357. Authority over intrastate transportation

This section would amend 49 U.S.C. 11501—which contains preemptive authority over intrastate transportation—to remove unnecessary Federal certification procedures for States seeking to regulate intrastate rail transportation (paragraph 2–3), to remove provisions regarding entities not regulated under Part A (paragraph 1 and 7), and to make conforming changes.

Sec. 358. Tax discrimination against rail transportation property

This section would amend 49 U.S.C. 11503—which prohibits state or local tax discrimination against rail transportation property—only for conforming changes.

Sec. 359. Withholding state and local income tax by certain carriers

This section would amend 49 U.S.C. 11504—which governs withholding of state and local income taxes for carrier employees—to remove provisions regarding entities not regulated under Part A and to make conforming changes.

Sec. 360. General authority for enforcement, investigations, etc.

This section would amend 49 U.S.C. 11701—which contains general authority to conduct administrative investigations and hear complaints—to remove language and provisions regarding entities not regulated under Part A and to make conforming changes.

Sec. 361. Enforcement

This section would amend 49 U.S.C. 11702—which authorizes civil enforcement actions by the regulatory agency—to remove provisions regarded entities and matters not regulated under Part A and to make conforming changes.

Sec. 362. Attorney General enforcement

This section would amend 49 U.S.C. 11703—which authorizes civil and criminal enforcement actions by the Attorney General—to remove language unrelated to Part A.

Sec. 363. Rights and remedies

This section would amend 49 U.S.C. 11705—which specifies the rights and remedies of persons injured by carrier actions—to remove language regarding entities not regulated under Part A and to make conforming changes.

Sec. 364. Limitation on actions

This section would amend 49 U.S.C. 11706—which contains time limits for bringing actions by and against carriers—to remove provisions related to carriers not regulated under Part A.

Sec. 365. Liability of common carriers under receipts and bills of lading

This section would amend 49 U.S.C. 11707 (commonly referred to as the Carmack Amendment)—governing cargo liability—to remove provisions regarding entities not regulated under Part A (paragraph 1–6 and 8–12), to reflect the elimination of tariffs for most traffic (paragraph 7), and to remove provisions regarding passenger transportation (paragraph 10).

Sec. 366. Liability when property is delivered in violation of routing instructions

This section would amend 49 U.S.C. 11710—which makes rail carriers liable for violating shipper routing instructions—only for conforming changes.

Sec. 367. General civil penalties

This section would amend 49 U.S.C. 11901—which contains general civil penalties for violating Part A—to remove penalties related to provisions that are repealed from Part A and to make conforming changes.

Sec. 368. Civil penalties for accepting rebates from common carrier

This section would amend 49 U.S.C. 11902—which contains civil penalties for accepting rebates—to reflect the elimination of tariff requirements for most transportation.

Sec. 369. Rate, discrimination, and tariff violations

This section would amend 49 U.S.C. 11903—which contains penalties for rate violations—to reflect the elimination of tariffs for most transportation.

Sec. 370. Additional rate and discrimination violations

This section would amend 49 U.S.C. 11904—which contains additional penalties for rate and discrimination violations—to reflect the elimination of tariffs for most transportation (paragraph 6), to remove provisions regarding entities not regulated under Part A (paragraph 1–4), and to make conforming changes.

Sec. 371. Interference with railroad car supply

This section would amend 49 U.S.C. 11907—which contains penalties for interference with railroad car supply—only for conforming changes.

Sec. 372. Record keeping and reporting violations

This section would amend 49 U.S.C. 11909—which contains penalties for record keeping and reporting violations—to remove provisions regarding entities not regulated under Part A and to make conforming changes.

Sec. 373. Unlawful disclosure of information

This section would amend 49 U.S.C. 11910—which contains penalties for unlawful carrier disclosure of confidential shipper information—to remove provisions regarding entities not regulated under Part A and to make conforming changes.

Sec. 374. Consolidation, merger, and acquisition of control

This section would amend 49 U.S.C. 11912—which contains penalties for violating the carrier consolidation provisions of the statute—to remove a reference to a repealed provision.

Sec. 375. General criminal penalty

This section would amend 49 U.S.C. 11914—which contains general criminal penalties when specific penalties are not provided—to remove provisions regarding entities not regulated under part A and to make conforming changes.

Sec. 376. Financial assistance for State projects

This section would amend 49 U.S.C. 22101—which requires authorization of abandonment or discontinuance as a prerequisite for federal financial assistance for State projects to continue rail service—only for conforming changes.

Sec. 377. Status of Amtrak and applicable laws

This section would amend 49 U.S.C. 24301—containing certain limited regulatory authority over Amtrak—only for conforming changes.

Sec. 378. Rail-Shipper Transportation Advisory Council

This section would establish a Rail-Shipper Transportation Advisory Council, in 49 U.S.C. 10391, to advise the government on significant rail transportation policy issues of concern to small shippers and small railroads, including car supply, rates, competition, and effective procedures for addressing legitimate shipper and other claims. The Council would be directed to prevent or address obstacles to effective and efficient transportation through private-sector mechanisms, where possible, and, where unsuccessful, to suggest appropriate regulatory or legislative relief.

The Council would be composed of 15 members outside of the federal government, to be appointed by the Board's Chairman within 60 days. The 9 voting members would include at least 4 representatives of small shippers and at least 4 representatives of small (Class II or III) railroads. The 6 nonvoting members would include 3 from Class I railroads and 3 from large shipper organizations. In addition, the Secretary and the Board members would serve as ex officio members. The Council would meet at least semiannually and would be required to prepare an annual report of its activities.

TITLE IV—MOTOR CARRIER, WATER CARRIER, BROKER, AND FREIGHT FORWARDER TRANSPORTATION

SUBTITLE A—ADDITION OF PART B

Section 401. Enactment of part B of subtitle IV, title 49, United States Code

This section would amend Subtitle IV of title 49 by inserting after chapter 119 a new Part B relating to motor carriers, water carriers, brokers, and freight forwarders. Part B would be administered by the Secretary, except for those provisions specifically assigned to the Board.

New chapter 131 (General provisions) would import pertinent provisions from existing chapter 101. Specifically, new 49 U.S.C. 13101 (Transportation policy) would set out the national transportation policy from existing 49 U.S.C. 10101. New 49 U.S.C. 13102 (Definitions) would import those definitions from existing 49 U.S.C. 10102 that would be applicable to Part B. However, no distinction between contract and common carriers would be retained in light of the elimination of restrictive licensing and tariff filing requirements for most transportation. Because all motor carriers could freely contract, separate categories of carriers would not be needed. The definitions of foreign motor carriers and foreign motor private carriers, which are needed for enforcement of the provisions of the North American Free Trade Agreement (NAFTA), would be imported from existing 49 U.S.C. 10530. The definition of residential household goods would be subdivided between those transported for the individual householder (for which contract rates would be precluded) and those transported under an arrangement with a third party (which would not be so restricted). New 49 U.S.C. 13103 (Remedies are cumulative) would import the existing provisions of 49 U.S.C. 10103, so as to preserve the current relationship between those remedies provided for in the ICA and other remedies that may be available.

New chapter 133 (Administrative provisions) would import those administrative provisions of existing subchapter II of chapter 103 that would be needed for the regulatory and oversight functions placed in Part B, but with greater leeway for the Secretary and Board to fashion appropriate administrative procedures. More specifically, new 49 U.S.C. 13301 (Powers) would give the Secretary the general powers that the ICC has under existing 49 U.S.C. 10321 and, in subsection (f), would provide the Board with the same powers when exercising functions assigned to it in Part B.

New 49 U.S.C. 13302 (Intervention) would incorporate from existing 49 U.S.C. 10328 the notice requirement and opportunity for public participation. New 49 U.S.C. 13303 (Service of notice in proceedings under this part) would import from existing 49 U.S.C. 10329 the provisions requiring regulated entities to designate agents on whom notice of administrative proceedings can be served. New 49 U.S.C. 13304 (Service of process in court proceedings) would import from existing 49 U.S.C. 10330 the provisions requiring carriers and brokers to designate an agent on whom notice of court proceedings can be served.

New chapter 135 (Jurisdiction) would import from existing chapter 105 the jurisdictional provisions applicable to transportation other than by rail and pipeline. The jurisdiction over motor carriers and brokers, from existing Subchapter II of chapter 105, would be set forth in subchapter I (Motor carrier transportation) of chapter 135. New 49 U.S.C. 13501 (General jurisdiction) would import the basic jurisdictional statement from existing 49 U.S.C. 10521(a), except for the (unnecessary) introductory clause and the savings provisions of 49 U.S.C. 10521(b). Existing 49 U.S.C. 10521(b)(1)–(3) has been mooted by a more recent broad preemption of intrastate regulation. Existing 49 U.S.C. 10521(b)(4) would be needless surplusage given the unquestionable right of states to tax motor carriers and the retention of the provisions of 49 U.S.C. 11503(a) and 11504(b) in Part B.

New 49 U.S.C. 13502 (Exempt transportation between Alaska and other States) would preserve the existing exclusion, in 49 U.S.C. 10522, for the portion of interstate transportation conducted in a foreign country. New 49 U.S.C. 13503 (Exempt motor vehicle transportation in terminal areas) would preserve the jurisdictional allocations in existing 49 U.S.C. 10523 for terminal area operations. New 49 U.S.C. 13504 (Exempt motor carrier transportation entirely in one State) would preserve the exemption of existing 49 U.S.C. 10525(e) for transportation (other than of household goods) within Hawaii.

Residual jurisdiction over domestic water carriage, from Subchapter III of chapter 105, would be set forth in subchapter II of chapter 135. This bill does not provide for active regulation of domestic water carriage (other than for joint rates in noncontiguous domestic trade), in view of the highly competitive nature of that industry and the already limited nature of regulation of domestic water carriage. The bill retains residual jurisdiction over such transportation, however, to ensure that this transportation would not be subjected to similar regulation under other laws. For that purpose, new 49 U.S.C. 13521 (General jurisdiction) would import the basic jurisdictional statement of existing 49 U.S.C. 10541(a) (except for the introductory clause that allowed regulation through other laws).

Jurisdiction over freight forwarder service, imported from Subchapter IV of chapter 105, would be placed in subchapter III of chapter 135. Specifically, new 49 U.S.C. 13531 (General jurisdiction) would incorporate the provisions of existing 49 U.S.C. 10561, but would expand that jurisdiction to include all freight forwarders (not just those providing service for shipments of household goods), in order to fill an inappropriate regulatory gap. Because freight forwarders act as carriers in the assembling and delivery of shipments, they should be subject to the registration requirements to ensure that they are fit to operate and are insured. Freight forwarders of commodities other than household goods would not be subjected to any further regulation of their activities beyond the registration requirement.

Subchapter IV of chapter 135 would contain new 49 U.S.C. 13461 (Authority to exempt transportation or service), which would give broad exemption authority, comparable to that of the Board under 49 U.S.C. 10505, to both the Secretary and the Board, for each to apply to the portions of Part B that it is charged with administering. This exemption authority could not be used to relieve an entity from the cargo liability, insurance, or safety fitness requirements of Part B, however, unless that entity would have been eligible for a statutory exemption available prior to this bill.

New chapter 137 (Rates) would import certain provisions of existing chapter 107 that relate to the rates and interline arrangements of entities that would be covered by Part B. New 49 U.S.C. 13701 (Requirements for rates, classifications, through routes, rules, and practices for certain transportation) would retain rate regulation for only two categories of traffic under Part B: (1) residential household goods movements and (2) joint-rate water-motor movements in non-contiguous domestic trade. Other types of traffic that are handled by the motor carrier and freight forwarder industries today are sufficiently competitive that those shippers can adequately protect their interests without such regulation. For the two categories of traffic for which rates would be regulated, new 49 U.S.C. 13701(a) would import the basic rate reasonableness requirement from existing 49 U.S.C. 10701, while new 49 U.S.C. 13701(b) would import from existing 49 U.S.C. 10704 and 10705 the regulatory authority to prescribe a rate when the carrier's rate is unreasonable. The responsibility for administering these provisions would be placed with the Board.

New 49 U.S.C. 13702 (Tariff requirement for certain transportation) would retain a tariff requirement only for the same two limited categories of traffic: (1) joint rates for motor-water movements in non-contiguous domestic trade and (2) residential movements of household goods. New 49 U.S.C. 13702(a) would import from existing 49 U.S.C. 10761 the requirement for a tariff and the prohibition against charging an amount different from that contained in the tariff. New 49 U.S.C. 13702(b)–(e) would import the applicable tariff filing requirements of existing 49 U.S.C. 10762 for joint-rate movements in the non-contiguous domestic trade. The tariffs for such movements would be filed with the Board.

New 49 U.S.C. 13702(f) would require household goods carriers to maintain tariffs applicable to those residential moves, but would not require that those tariffs be filed with the Board. Rather, those tariffs would be required to be published and kept open and available for inspection. The carrier would be bound by the terms of its tariffs, and would be prohibited from transporting residential household goods movements for individual householders without a tariff. The Board would be charged with administering and enforcing these requirements.

New 49 U.S.C. 13703 (Certain collective activities: exemption from antitrust laws), imported from existing 49 U.S.C. 10706, would provide for Board approval of, and concomitant antitrust immunity for, certain motor carrier collective activities. It would add several new features, however. New 49 U.S.C. 13703(d) would make Board approval effective only for a 3-year period; an approval would expire at the end of the 3-year period if not reapproved at the request of the carriers. New 49 U.S.C. 13703(e) would contain a "grandfather" provision allowing existing approved agreements to continue in effect (unless earlier withdrawn or revoked) for an initial 3 years (at the end of which the renewal requirement would apply). New 49 U.S.C. 13703(f) would preclude the approval of collective activity from providing a basis for an undercharge claim and it would provide, more particularly, that an undercharge claim could not be based solely on a commodity classification established pursuant to that section. New 49 U.S.C. 13703(g) would codify the existing ICC requirement, upheld by the courts, that a carrier must participate in a mileage guide established under an approved collective-action agreement in order to enforce mileage rates using such a guide.

New 49 U.S.C. 13704 (Household goods rates—estimates; guarantees of service) would import the special provisions of existing 49 U.S.C. 10735, allowing household goods carriers to use binding estimates and guaranteed pick-up and delivery times. New 49 U.S.C. 13705 (Requirements for through routes among motor carriers of passengers) would preserve the requirement from existing 49 U.S.C. 10703(a)(3) that intercity bus companies establish through routes with each other, and the requirement from existing 49 U.S.C. 10701 that those through routes be reasonable. Drawing from existing 49 U.S.C. 10705, it would authorize the Board to prescribe through routes and the conditions under which they are operated, when necessary to enforce the requirement of reasonable through routes.

New 49 U.S.C. 13706 (Liability for payment of rates) would import the useful provisions of 49 U.S.C. 10744 regarding liability, as between a consignor or consignee, for payment for transportation. New 49 U.S.C. 13707 (Billing and collecting practices) would preserve the beneficial truth-in-billing requirement of existing 49 U.S.C. 10767(b), enacted for motor carriers in the Negotiated Rates Act of 1993. It would also retain the prohibition against rate reductions to someone other than the person ultimately responsible for paying the transportation charges.

New 49 U.S.C. 13708 (Procedures for resolving claims involving unfiled, negotiated transportation rates) would import, and place under the Board's administration, the undercharge resolution provisions of existing 49 U.S.C. 10701(f), as enacted in the Negotiated Rates Act of 1993, except for the now-moot tariff adherence provision of 49 U.S.C. 10701(f)(7). New 49 U.S.C. 13709 (Additional motor carrier undercharge provisions) would import, and place under the Board's administration, the further billing and undercharge procedures of existing 49 U.S.C. 10762(a)(3)–(5), enacted in the Transportation Regulatory Reform Act of 1994 (TIRRA). New Section 13710 (Alternative procedure for resolving undercharge disputes) would codify the undercharge relief provided in section 2(e) of the Negotiated Rates Act of 1993 (NRA). It would expand that unreasonable practice relief by removing the September 30, 1990, cut-off date.

New 49 U.S.C. 13711 (Government traffic) would contain appropriate provisions specific to government traffic under Part B, in place of existing 49 U.S.C. 10721. New 49 U.S.C. 13712 (Food and grocery transportation) would retain the provisions of existing 49 U.S.C. 10732 enabling sellers of food and groceries to provide for compensated customer pick-ups in conjunction with a uniform zone delivered pricing system.

New chapter 139 (Registration) would revise and incorporate certain provisions of subchapter II of chapter 109 governing the authorization needed for entities to engage in transportation and services covered by Part B. It would convert the required authorization from a licensing process to a registration process. All vestiges of restrictive licensing, based either on a gauging of public demand or need for the service or on protecting existing carriers in a market, would be removed. The registration process would be based solely on an entity's fitness to operate. The fitness determination would consist of three elements: safety record (for carriers and freight forwarders operating trucks), insurance coverage, and willingness to comply with applicable laws and regulations.

New 49 U.S.C. 13901 (Requirement for registration), drawn from existing 49 U.S.C. 10921, would make clear that a person could operate as a motor carrier, broker, or freight forwarder only if registered with the Secretary under new chapter 139. New 49 U.S.C. 13902 (Registration of motor carriers), distilled from existing 49 U.S.C. 10922, would contain the registration provisions for motor carriers (in subsection (a)). With respect to intercity bus operations, it would retain the current restrictions on subsidized operations to prevent them for competing unfairly with unsubsidized operations (in subsections (b)(1)–(2), (8)). It would retain the current provisions authorizing intrastate service to be provided in conjunction with interstate bus operations (in subsections (b)(3)–(6)). It would retain the existing preemption for intercity bus operators providing pickup and delivery of express packages, newspapers or mail (in subsection (b)(7)). Finally, it would contain special registration provisions for foreign carriers, drawn from existing 49 U.S.C. 10530 and 10922(m), to reflect the special foreign policy implications in that area (in subsection (c)).

New 49 U.S.C. 13903 (Registration of freight forwarders), drawn from existing 49 U.S.C. 10923(a), would contain the registration provisions for freight forwarders. As explained above, the registration requirement would be extended to all freight forwarders (not just those handling household goods), so as to fill an inappropriate regulatory gap. Because freight forwarders act as carriers in the assembling and delivery of shipments, they should be subject to the registration requirements to ensure that they are fit to operate and maintain the required insurance coverage. Freight forwarders of commodities other than household goods are not subjected to any further regulation of their activities beyond the registration requirement, however. It would continue the current requirement that, when a freight forwarder acts in the capacity of a carrier for the entire move, it must be registered as a carrier as well. New 49 U.S.C. 13904 (Registration of motor carrier brokers), drawn from existing 49 U.S.C. 10924, would contain the registration provisions for brokers.

New 49 U.S.C. 13905 (Effective periods of registration), drawn from existing 49 U.S.C. 10925, would provide for a registration generally to remain in effect for five years so long as the registrant maintains its insurance coverage (subsection a). However, the Secretary could amend or revoke a registration on request of the holder (subsection (b)), or suspend or revoke a registration on complaint or on the Secretary's own initiative for cause (subsections (b)–(d)).

Cause for suspension or revocation could be unsafe operations, lack of the required insurance coverage, or failure to comply with regulatory requirements. The new section would eliminate any advance notice requirement for the Secretary to address imminent safety hazards, given the nature of the hazards in such situations.

New 49 U.S.C. 13906 (Security of motor carriers, brokers, and freight forwarders), drawn from existing 49 U.S.C. 10927, would contain the minimum insurance or bonding requirements needed for a motor carrier, broker, or freight forwarder to obtain and keep a registration to operate. It would specify that a registration would remain in effect only as long as the registrant continues to satisfy these security requirements. The Secretary would determine the type and amount of security required, and under what circumstances a carrier could self-insure. It would maintain the ICC's current requirements that insurance carriers provide advance notice of any cancellation of insurance, and that full ("first-dollar") coverage be provided.

New 49 U.S.C. 13907 (Household goods agents), incorporating existing 49 U.S.C. 10934, would retain a household goods carrier's responsibility for its agents and their actions. It would also retain federal regulatory oversight over the agents used by such carriers, and continue the antitrust immunity for discussions and agreements between such carriers and their agents.

New 49 U.S.C. 13908 (Registration and other reforms) would direct the Secretary to conduct a study of whether, and to what extent, the various existing overlapping motor carrier registration provisions should be modified or replaced with a single, on-line federal system. The existing systems to be studied would include the DOT identification number system, the single-State registration system under new 49 U.S.C. 14505, the system for administering the registration requirements of new 49 U.S.C. 13901–13905, and the system for administering the insurance provisions of new 49 U.S.C. 13906. New 49 U.S.C. 13908 would enumerate some of the factors to be considered by the Secretary. It would also permit the Secretary to impose user fees that cover the full costs of maintaining these systems. Finally, it would direct the Secretary to conclude the study within 18 months and report to Congress on the findings and any appropriate legislative changes needed.

New chapter 141 (Operations of carriers) would incorporate certain provisions of existing chapter 111 for entities covered by Part B. Subchapter I (General requirements) would contain operational provisions. New 49 U.S.C. 14101 (Providing transportation and service), taken from existing 49 U.S.C. 11101, would continue the basic common carrier obligation to provide transportation or service on reasonable request and to provide safe and adequate service, equipment, and facilities. It would expressly allow carriers to enter contracts for specific shipments (other than for residential household goods movements arranged and paid for directly by the householder) under which both parties may waive their ICA rights and remedies.

New 49 U.S.C. 14102 (Leased motor vehicles) would preserve the provisions of existing 49 U.S.C. 11107, enabling the Secretary to regulate the relationship between registered carriers and the owner-operators engaged by them to provide the transportation.

New 49 U.S.C. 14103 (Loading and unloading motor vehicles) would preserve the provisions of existing 49 U.S.C. 11109, which govern "lumping" (the utilization of other persons to load or unload freight from a truck) in the trucking industry, whether or not the carriers involved are regulated under Part B. New 49 U.S.C. 14104 (Household goods carrier operations) would preserve the provisions of existing 49 U.S.C. 11110, governing the performance of household goods carriers.

Subchapter II (Reports and records) of new chapter 141 would provide for data collection by the Secretary and the Board, as needed to carry out their respective functions. New 49 U.S.C. 14121 (Definitions), taken from existing 49 U.S.C. 11141, would provide that the data requirements extend to receivers, trustees, and associations. New 49 U.S.C. 14122 (Records: form; inspection; preservation), imported from existing 49 U.S.C. 11144, would allow the Secretary and the Board, as appropriate, to prescribe the form of records to be kept by carriers and brokers, to inspect those records, and to set how long those records must be retained by the carrier. New 49 U.S.C. 14123 (Reports by carriers, brokers, and associations), drawn from existing 49 U.S.C. 11145, would require carriers to file annual reports with the Secretary, but would allow the Secretary to waive that requirement for individual carriers where necessary to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

New Chapter 143 (Finance) would incorporate two provisions of existing chapter 113. New 49 U.S.C. 14301 (Security interests in certain motor vehicles), imported from existing 49 U.S.C. 11304, would govern the recordation of security interests in trucks, tractors, and trailers. New 49 U.S.C. 14302 (Pooling and division of transportation or earnings), drawn from existing 49 U.S.C. 11342, would provide for Board supervision of pooling arrangements among motor carriers. It would retain the immunity from antitrust and other laws currently in 49 U.S.C. 11341. It would also include a grandfather provision for existing approved arrangements. New 49 U.S.C. 14303 (Consolidation, merger, and acquisition of control of motor carriers of passengers), drawn from existing provisions in 49 U.S.C. 11341, 11343, 11344 and 11345a, would require Board review of mergers or other consolidations of intercity bus carriers having combined annual gross operating revenues greater than $2 million. It would confer antitrust immunity on Board-approved consolidations.

New chapter 145 (Federal-State relations) would preserve the broad preemptions of intrastate regulation for carriers regulated under Part B. New 49 U.S.C. 14501 (Federal authority over intrastate transportation) would incorporate existing prohibitions against intrastate regulation. Subsection (a), imported from 49 U.S.C. 11501(e), would cover intercity bus rates, scheduling, and discontinuances or reductions in service. Subsection (b), imported from 49 U.S.C. 11501(g), would cover the rates, routes, or services of freight forwarders and transportation brokers. Subsection (c), imported from 49 U.S.C. 11501(h), would cover trucking prices, routes, and services. The preemption would be narrowed, however, to allow State and local governments to regulate the price and related conditions of non-consensual tows by tow-truck operators, so as to preclude exorbitant prices and unreasonable conditions from being imposed on unwilling parties in such situations.

New 49 U.S.C. 14502 (Tax discrimination against motor carrier transportation property) would incorporate the restrictions of existing 49 U.S.C. 11503a on State and local authority to tax property used to provide interstate trucking service. New 49 U.S.C. 14503 (Withholding State and local income tax by certain carriers) would preserve the restrictions of existing 49 U.S.C. 11504 on State and local authority to tax the earnings of employees of motor carriers and water carriers.

New 49 U.S.C. 14504 (State tax) is a new provision that would prohibit State and local governments from imposing a tax on the sale of intercity bus tickets. This provision is intended to override a recent court decision permitting such a tax. New 49 U.S.C. 14505 (Registration of motor carriers by a State) would import, from 49 U.S.C. 11506, the existing single-State registration system for evidencing motor carrier insurance coverage. That system would remain intact for the time being, but would be impacted by the system reform called for by new 49 U.S.C. 13908.

New chapter 147 (Enforcement; investigations; rights; remedies) would incorporate into Part B the appropriate provisions of existing chapter 117. New 49 U.S.C. 14701 (General authority) would give the Secretary and the Board the same general authority to conduct investigations and hear complaints, with respect to the functions assigned to each, as the ICC has had under 49 U.S.C. 11701. New 49 U.S.C. 14702 (Enforcement by the regulatory authority) would preserve for the Secretary and the Board, as to those functions transferred to each under Part B, the ICC's longstanding authority in 49 U.S.C. 11702 to bring civil enforcement actions in court. New 49 U.S.C. 14703 (Enforcement by the Attorney General) would preserve the Attorney General's authority under 49 U.S.C. 11703 to bring civil or criminal enforcement actions relating to Part B, including orders or regulations of the Secretary or the Board.

New 49 U.S.C. 14704 (Rights and remedies of persons injured by carriers or brokers) would incorporate from 49 U.S.C. 11705 the right of an injured person to bring a civil action to enforce an order of the Secretary or the Board under Part B. It would remove any requirement that an injured person bring the complaint to the agency first. New 49 U.S.C. 14705 (Limitation on actions by and against carriers) would incorporate from 49 U.S.C. 11706 relevant time limits for bringing court suits by or against carriers and makes those time limits uniform for all types of traffic under Part B.

New 49 U.S.C. 14706 (Liability of carriers under receipts and bills of lading) would preserve in Part B the "Carmack Amendment" contained in 49 U.S.C. 11707, which makes carriers and freight forwarders fully liable for loss or damage except to the extent the parties agreed in advance to limit the carrier's liability. New 49 U.S.C. 14707 (Private enforcement of registration requirement), imported from 49 U.S.C. 11708, would authorize private enforcement of the registration requirement by persons injured by unregistered transportation or service. New 49 U.S.C. 14708 (Dispute settlement program for household goods carriers) would modify the existing arbitration provisions of 49 U.S.C. 11711, by requiring all household goods carriers to offer shippers the option of neutral arbitration as a means of settling disputes over household goods transportation. New 49 U.S.C. 14709 (Tariff reconciliation rules for motor carriers of property) would preserve the undercharge relief contained in 49 U.S.C. 11712(a), enabling the Board to authorize departures by mutual consent from the tariff rate for past shipments so as to avoid or resolve both undercharge and overcharge claims.

New chapter 149 (Civil and criminal penalties) would preserve the provisions of existing chapter 119 that are applicable to Part B, but would update the level of fines. New 49 U.S.C. 14901 (General civil penalties), imported from existing 49 U.S.C. 11901, would contain civil penalties for violating reporting and registration requirements, household goods consumer-protection requirements, and the prohibitions against rate reductions to third parties.

Several provisions from chapter 149 would be applicable only to the narrow set of transportation for which tariffs would still be required under Part B. Specifically, new 49 U.S.C. 14902 (Civil penalty for accepting rebates from carriers), 14903 (Tariff violations), 14904 (Additional rate violations), and 14913 (Conclusiveness of rates in certain prosecutions) would import the tariff observance provisions of existing 49 U.S.C. 11902, 11903, 11904, and 11916, respectively.

New 49 U.S.C. 14905 (Penalties for violations of rules relating to loading and unloading motor vehicles), imported from existing 49 U.S.C. 11902a, would contain specific civil and criminal penalties for violating the lumping provisions of new 49 U.S.C. 14103. New 49 U.S.C. 14906 (Evasion of regulation of motor carriers and brokers), imported from existing 49 U.S.C. 11906, would contain penalties for evading regulation under Part B. New 49 U.S.C. 14907 (Record keeping and reporting violations), imported from existing 49 U.S.C. 11909, would contain specific penalties for withholding or falsifying records or reports that the Secretary or Board requires. New 49 U.S.C. 14908 (Unlawful disclosure of information) would preserve those provisions of existing 49 U.S.C. 11910 prohibiting entities that would be covered by Part B (or anyone receiving information from entities covered by Part B) from disclosing confidential shipper information.

New 49 U.S.C. 14909 (Disobedience to subpoenas), imported from existing 49 U.S.C. 11913, would contain penalties for disobeying a subpoena issued by the Secretary or the Board under Part B. New 49 U.S.C. 14910 (General criminal penalty when specific penalty not provided), imported from existing 49 U.S.C. 11914, would contain general criminal penalties when specific penalties are not provided for violations under Part B. New 49 U.S.C. 14911 (Punishment for violations committed by certain individuals), imported from existing 49 U.S.C. 11915, would extend the penalties of new chapter 149 to corporate officials, agents, and successors in interest. New 49 U.S.C. 14912 (Weight-bumping in household goods transportation) would preserve the penalties for weight-bumping now contained in 49 U.S.C. 11917.

SUBTITLE B—MOTOR CARRIER REGISTRATION AND INSURANCE REQUIREMENTS

Sec. 451. Amendment of Section 31102

This section would amend 49 U.S.C. 31102(b)(1) to provide that States receiving Federal grants under the Commercial Motor Vehicle Safety program cooperate in the enforcement of the registration and insurance requirements of 49 U.S.C. 31140 and 31146.

Sec. 452. Amendment of section 31138

This section would amend 49 U.S.C. 31138 to incorporate the existing ICC practice of allowing carriers to use multiple sources for satisfying the required level of insurance coverage, and to exclude from the Federal minimum insurance requirements certain subsidized mass transportation services, including specialized transportation for the elderly and disabled.

This section continues the current exemption from Federal insurance requirements for transit operators who operate in cities or metropolitan areas that are divided by a state line (49 U.S.C. 10526 (b)). The bill requires these transit operators, when they cross a state line, meet the insurance requirements of the higher of the states in which they provide transit service. With the relief provided, transit operators, particularly in smaller communities, will now be better able to provide cross-State transportation service to nearby medical or other facilities. The Federally imposed insurance requirements, which are designed for commercial interstate carriers, have been financially burdensome for operators providing this needed service.

Sec. 453. Self-insurance rules

This section would direct the Secretary to continue the existing ICC practice of allowing carriers to meet the insurance requirements through self-insurance where appropriate.

Sec. 454. Safety fitness of owners and operators

This section would amend 49 U.S.C. 31144 for conforming changes.

TITLE V—AMENDMENTS TO OTHER LAWS

Section 501. Federal Election Campaign Act of 1971

This section would amend 2 U.S.C. 451—under which the ICC regulates credit extended to candidates for carriers' services—to substitute the Board for the ICC and to eliminate a long-past date for issuing regulations.

Sec. 502. Agricultural Adjustment Act of 1938

This section would amend 7 U.S.C. 1291—which authorizes the Secretary of Agriculture to bring to the ICC a complaint of an unreasonable rate or practice relating to transportation of farm products—to substitute the Board for the ICC.

Sec. 503. Agricultural Marketing Act of 1946

This section would amend 7 U.S.C. 1622(j)—which authorizes the Secretary of Agriculture to bring petitions or complaints before the ICC regarding transportation rates, practices, and services—to substitute the Board for the ICC.

Sec. 504. Animal Welfare Act

This section would amend 7 U.S.C. 2145(a)—which directs the ICC to take appropriate action to implement regulations of the Secretary of Agriculture governing the handling of animals in transportation—to substitute the Board for the ICC.

Sec. 505. Title 11, United States Code

This section would amend the Bankruptcy Code in several places to substitute the Board for the ICC. The affected sections are 11 U.S.C. 1164 (authorizing the ICC to be heard in railroad bankruptcy reorganization proceedings), 1170 (requiring ICC action before a bankruptcy court may authorize the abandonment of a line), and 1172 (requiring ICC approval for transfer of a bankrupt railroad's line).

Sec. 506. Clayton Act

This section would amend 3 provisions of the Clayton Act to substitute the Board for the ICC. The affected sections are 15 U.S.C. 18 (which exempts ICC-approved mergers and acquisitions from the antitrust laws), 21 (which authorizes the ICC to enforce provisions of the Clayton Act), and 26 (which precludes private enforcement of the antitrust laws against regulated carriers).

Sec. 507. Consumer Credit Protection Act

This section would amend several administrative enforcement provisions of the Consumer Credit Protection Act to substitute the Board and the Secretary (for carriers subject to their respective jurisdictions) for the ICC and to otherwise conform to the changes made by this Act. The affected provisions are in 15 U.S.C. 1681s (fair credit reporting requirements), 1691c (equal credit opportunity requirements), and 1692l (fair debt collection practice requirements).

Sec. 508. National Trails System Act

This section would amend two provisions of the National Trails System Act to substitute the Board for the ICC. The affected sections are 16 U.S.C. 1247(d) (which directs the ICC to provide for interim use of railroad rights-of-way as trails) and 1248(d) (which directs the ICC to cooperate with the Secretary of Interior and Secretary of Agriculture to ensure that properties suitable for trails are made available for such use).

Sec. 509. Title 18, United States Code

This section would amend 18 U.S.C. 6001—which provides immunity from prosecution for testimony before certain agencies—by substituting the Board for the ICC.

Sec. 510. Internal Revenue Code of 1986

This section would amend various provisions of the Internal Revenue Code to conform the language to changes made by this Act and others. Notwithstanding these changes, this bill is not intended to affect the status of employers for purposes of the Railroad Retirement Act, the Railroad Unemployment Insurance Act, or the Railroad Retirement Tax Act, as section 122 of this bill clarifies.

Subsection (a) would amend two railroad retirement tax provisions. First, it would amend 26 U.S.C. 3231(a)—which directs the ICC to determine whether a line operated by electric power comes under the tax—to substitute the Board for the ICC. Second, it would amend 26 U.S.C. 3231(g) to conform the language defining a carrier to reflect this bill.

Subsection (b) would amend the definition of "regulated public utility" in 26 U.S.C. 7701(a). More specifically, it would amend 26 U.S.C. 7701(a)(33)(B) (dealing with gas pipeline carriers) to reflect that the duties of the Federal Power Commission have been transferred to the Federal Energy Regulatory Commission (FERC). It would amend 26 U.S.C. 7701(a)(33)(C)(i) (dealing with railroads) to substitute the Board for the ICC. It would amend 26 U.S.C. 7701(a)(33)(C)(ii) (dealing with oil pipelines) to substitute FERC (which now has jurisdiction over such pipelines) for the ICC. It would amend 26 U.S.C. 7701(a)(33)(F) (dealing with water carriers) to substitute the Secretary for the ICC. It would amend 26 U.S.C. 7701(a)(33)(G) & (H) (dealing with railroad lessors and parent corporations, respectively) to conform references to the ICA to changes made by this bill.

Sec. 511. Title 28, United States Code

This section would amend title 28 of the United States Code to substitute the Board for the ICC and to conform references to the ICA to changes made by this bill. Subsection (a) would change the heading for chapter 157, which governs review and enforcement of ICC orders. Subsection (b) would amend 28 U.S.C. 2321, which provides for review of ICC decisions in Federal courts of appeals and enforcement of ICC orders (other than orders for the payment of money) in Federal district court. Subsection (c) would amend 28 U.S.C. 2323, which provides for the ICC to appear and be represented by its counsel in a court action involving the validity of its order, and provides for interested persons to intervene. Subsection (d) would amend 28 U.S.C. 2341, which lists the federal agencies covered by the judicial review provisions of the Hobbs Act. Subsection (e) would amend 28 U.S.C. 2342, which assigns to the Federal courts of appeals exclusive jurisdiction to review the rules, regulations, or final orders of agencies covered by the Hobbs Act.

Sec. 512. Migrant and Seasonal Agricultural Worker Protection Act

This section would amend 29 U.S.C. 1841(b)—dealing with motor vehicle safety in the transportation of migrant and seasonal agricultural workers—to reflect the structural changes made to subtitle IV of title 49 by this bill.

Sec. 513. Title 39, United States Code

This section would amend various postal provisions of title 39. Subsection (a) would amend 39 U.S.C. 5005—providing for public availability of Postal Service contracts for the transportation of mail—to substitute the Board for the ICC. Subsection (b) would amend 39 U.S.C. 5203—governing the Postal Service's use of regulated carriers—to remove subsection (f) (a provision for an ICC finding that providing mail transportation would be detrimental to a motor carrier or that the carrier would not be suitable for providing such transportation) and to revise subsection (g) to reflect the transfer to the Board of the ICC's oversight responsibilities for mail transportation under 39 U.S.C. 5207–5208. Subsection (c) amends 39 U.S.C. 5207—which authorizes the ICC to determine reasonable rates for mail transportation—to substitute the Board for the ICC. Subsection (d) would amend 39 U.S.C. 5208—which provides procedures for reconsideration of ICC determines under 49 U.S.C. 5207—to substitute the Board for the ICC. Subsection (e) would make a conforming amendment to the index for Chapter 52 of Title 39.

Sec. 514. Energy Policy Act of 1992

This section would amend 42 U.S.C. 13369—which directs the Secretary of Energy to obtain data from, and consult with, the ICC in establishing a data base on rates for transportation of coal, oil, and gas—to substitute the Board for the ICC.

Sec. 515. Railway Labor Act

This section would amend 45 U.S.C. 151—which defines terms used in the Railway Labor Act—to conform the definition of ''carrier'' to changes made by this bill and to substitute the Board for the ICC in various references.

Sec. 516. Railroad Retirement Act of 1974

This section would amend 45 U.S.C. 231—which defines terms used in the Railroad Retirement Act of 1974—to conform the definition of ''carrier'' to comport with changes made in this bill and to substitute the Board for the ICC in various references. Notwithstanding these changes, this bill is not intended to affect the status of employers for purposes of the Railroad Retirement Act, as section 122 of the bill clarifies.

Sec. 517. Railroad Unemployment Insurance Act

Subsection (a) would amend 45 U.S.C. 351 to conform the definition of ''carrier'' to comport with changes made in this bill and to substitute the Board for the ICC in references. Subsection (b) would amend 45 U.S.C. 352(h)(3) to substitute the Board for the ICC in one place and to clarify that the Board referred to next in that sentence is the Railroad Retirement Board. Notwithstanding these changes, this bill is not intended to affect the status of employers for purposes of the Railroad Unemployment Insurance Act, as section 122 of the bill clarifies.

Sec. 518. Emergency Rail Services Act of 1970

This section would amend 45 U.S.C. 662—which requires ICC approval of the terms of purchase or lease when the Secretary procures track of a railroad in reorganization—to substitute the Board for the ICC.

Sec. 519. Regional Rail Reorganization Act of 1973

This section would amend 45 U.S.C. 744—which requires ICC approval for changes in rail service in the Northeast by carriers other than Consolidated Rail Corporation (Conrail)—to substitute the Board for the ICC.

Sec. 520. Railroad Revitalization and Regulatory Reform Act of 1976

This section would amend 45 U.S.C. 830—which involves government railroad loan programs—to update a reference to the railroad security issuance provisions of the ICA.

Sec. 521. Alaska Railroad Transfer Act of 1982

This section would amend 45 U.S.C. 1207—which brings the Alaska Railroad under the ICC's jurisdiction—to substitute the Board for the ICC.

Sec. 522. Merchant Marine Act, 1920

Subsection (a) would amend section 8 of the Merchant Marine Act, 1920 (46 U.S.C. App. 867)—under which the Secretary is to report to the ICC regarding detrimental effects on ports of rail rates and practices—to substitute the Board for the ICC. Subsection (b) would amend section 28 of the same Act (46 U.S.C. App. 884)—under which the ICC is charged with enforcing a requirement that railroads may not prefer foreign flag water carriers by charging them a lower rate than American flag water carriers—to substitute the Board for the ICC.

Sec. 523. Service Contract Act of 1965

This section would amend 41 U.S.C. 356(3)—which exempts motor carriers from the Davis-Bacon Act—to reflect the elimination of tariffs for most motor carriage under this bill.

Sec. 524. Federal Aviation Administration Authorization Act of 1994

This section would amend section 601(d) of Pub. L. 301–305 to continue Hawaii's regulation of motor carriers in that state.

TITLE VI—AUTHORIZATION

Section 601. Authorization of appropriations

This section would authorize funding for (1) the closedown of the ICC and severance costs for its personnel, (2) the Board for fiscal year 1996, and (3) the Board for fiscal years 1997 and 1998 for the functions transferred from the ICC.

TITLE VII—EFFECTIVE DATE

Section 701. Effective date.

This section would make this bill effective on January 1, 1996.

ADDITIONAL VIEWS OF SENATOR PRESSLER

I do not believe there should be federally-mandated labor protection provisions in any railroad transaction. My initial plan was to propose that all labor protection requirements be dropped to the six month standard as proposed in the Amtrak legislation and to ensure no labor protection on Class II or Class III railroad transactions.

In deference to my Democratic colleagues and in the hopes of moving this legislation forward, I have agreed to include in S.1396 a labor protection standard. While this provision makes a modest step forward, it does not go nearly far enough. I believe that all federally-mandated labor protection should be eliminated for short line and regional railroads.

I do want to acknowledge, however, that our Committee-passed bill does include positive features. It promotes the line sale process and limits the discretion of the Board to impose labor protection. While we have not eliminated the option to impose labor protection on these transactions. However, we have lowered the ceiling on labor protection. If the Commission, as under the current standards, believes that "exceptional circumstances" exist, they then have a range from notification to one year severance payments—not six years. I expect the Board to continue the existing exemption practice.

The bill allows Class II and Class III freight railroads to directly acquire, construct, operate or provide transportation over rail line with the one year cap on labor protection. This will eliminate the need to set up "new companies" every time a line is acquired. Further, this will supersede section 11343 requirements for these transactions which currently require the imposition of 6 year labor protection. For the first time it will be possible for a regional railroad to directly buy a line and operate it as a part of the system.

If there is any question of a trade-off between federally-mandated protection payments and service preservation, the dollars must go to service preservation. Only the most exceptional line sale cases should even present a question of whether labor protection should be imposed. This bill is intended to all but eliminate challenges so that the current exemption process can continue with few interruptions.

Finally, in terms of labor protection, it is my view that an adversely affected employee is one who has lost his job because he is not hired by the acquiring carrier or retained by the selling carrier. We want the motivation to be to keep employees and their skills in the railroad industry, not to provide a pay off to leave it.

LARRY PRESSLER.

ADDITIONAL VIEWS OF SENATOR ASHCROFT

One issue which I feel needs to be examined further is that of remedies. Specifically, Congress must determine whether or not the Federal law for remedies should be exclusive and preempt remedies based on statutory or common law. The prevailing case law, as developed by courts across the country, has long interpreted the Interstate Commerce Act to prohibit remedies based on statutory or common law. However, recent court decisions have allowed action against carriers to proceed under other laws. I believe that Congress should be concerned about these decisions because they have the potential of undermining uniform federal policy. In fact, the Department of Transportation's "Report on the Future of the Interstate Commerce Commission" published in July of 1995 stated specifically that "repeals or cutbacks in ICC's current regulatory authority should not revive common law or state jurisdiction."

Exclusive preemption of other remedies would prevent a confusing situation where legal actions are instituted under a variety of laws. This could result in similar claims being treated differently from one state to another and would likely encourage forum shopping. In order to avoid this, exclusive remedies are needed to provide a consistent method of resolving disputes and prevent needless litigation.

I believe the Committee should continue to examine this issue before S.1396 is brought to the floor of the Senate. I believe it has been, and continues to be, the intent of Congress to establish a uniform federal standard for the benefit of interstate commerce and this nation's economy.

JOHN ASHCROFT.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate to dispense with the requirement of paragraph 12 of rule XVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill reported by the Committee).